Supreme Court, U.S.
FILED

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No. 97-_____

In The
Supreme Court Of The United States

October Term, 1996

PAUL JENNINGS HILL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI (WITH APPENDIX)

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QUESTION PRESENTED

Whether Hill's Sixth and Fourteenth Amendment rights to counsel were violated when the judge knew Hill's only defense to two counts of premeditated murder was the affirmative defense of justification, but failed to inquire if Hill had any knowledge of how to present that justification defense which required extensive, legal research in order to proffer evidence sufficient to establish the factual predicate, by the skillful use of compulsory process, to prove that complex intricate defense, and whether that failure to inquire violated Faretta v. California, 422 U.S. 806 (1978), which requires a waiver of the right to counsel must be "voluntarily and intelligently" made, Id. at 807; "an intelligent and knowing", waiver, Id. at 809; a "knowing and intelligent" waiver, Id. at 812; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. at 814; he must "knowingly and intelligently" waive that right to counsel, Id. at 835, and in addition, the judge failed to follow the more stringent Florida Rule 3.111(d), which requires that:

> (2) a defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into both the accused's comprehension... and...capacity to make an intelligent and understanding waiver

and:

> (3) No waiver shall be accepted if it appears

> that the defendant is unable to make an intelligent and understanding choice because of...the nature or complexity of the case...: [Emphasis added],

particularly where the State filed its motion in limine to preclude the necessity/justification defense on October 14, 1994, which, on October 24, 1994 when set for oral argument, the following occurred within minutes of each other: 1) the State handed its brief to the judge and to Hill in open court, 2) Hill moved for counsel to orally argue to which the State objected, and the judge sustained the State's objection, 3) the State argued its motion which Hill was unable to argue, 4) the judge granted the motion in limine, following which, Hill, at trial, asked no voir dire questions, objected to no voir dire questions asked by the State, waived both of his opening arguments and final closing argument, failed to cross-examine any witnesses, offered no witnesses, failed to offer any exhibits, failed to object to any exhibits, made no requests to charge, took no exceptions to the charge, and finally made a meaningless 67 word comment which resulted in a verdict of two death sentences against Hill, amount to a violation of Hill's Sixth and Fourteenth Amendment rights?

PARTIES

The Petitioner is as follows: Paul Jennings Hill

The Petitioner was a defendant in the State of Florida in both the Circuit Court in and for Escambia County and in the Supreme Court of the State of Florida.

The Respondent is the State of Florida.

The Respondent prosecuted the case in both the Circuit Court in and for Escambia County and in the Supreme Court of the State of Florida.

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No. 97 -

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OCTOBER TERM, 1996

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vs.

THE STATE OF FLORIDA,

Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Paul Jennings Hill respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Florida entered in this proceeding on November 27, 1997, rehearing denied March 6, 1997, [A1 - A24] in order to resolve important federal questions concerning the fundamental substantive Sixth Amendment right to counsel as made applicable to the States by the Fourteenth Amendment which judgment conflicts with the relevant decisions of this Court, particularly Faretta v. California, 422 U.S. 806, as applied to the even more stringent Florida Rules of Criminal Procedure, §3.111(d).

DECISIONS BELOW

Hill was charged in two counts of premeditated murder by an indictment on August 9, 1994. On September 26, 1994, a motion for a Faretta hearing and motion to withdraw by the public defender were filed [A25 - A27] and heard on September 27, 1994, [A34 - A155], both motions being granted on September 30, 1994 [A28 - A33]. On October 13, 1994 a supplemental Faretta hearing took place. [A156 - A178]. The State filed a motion in limine to preclude the justification defense on October 14, 1994 [A201 - A206] and a memorandum in opposition to it was filed. The State, at the time of oral argument, October 24, 1994, filed in open court its memorandum in support of its motion in limine and simultaneously handed a copy to Hill [A207 - A225] which was the first time Hill had seen the State's memorandum.

Hill immediately [A179] moved to have Attorney Heuser, who had filed a motion to appear pro hac vice, [A226 - A228] and who had drafted Hill's memo, argue in opposition to the State's motion in limine, the State opposed Heuser's motion and Hill's motion, [A179 - A183] and the judge denied Heuser's motion to appear pro hac vice, and denied Hill's motion [A183] to have Attorney Heuser argue the motion resulting in Hill being denied counsel to argue his critical justification defense. Because he was denied counsel, Hill was not capable of making, nor did he make, any oral argument [A179 - A200] and the judge granted the State's Motion in Limine [A198 - A199] and [A229 - A233] on October 24, 1994.

The jury found Hill guilty in the guilt phase of the trial in less than an hour. In an equally short time in the penalty phase of the case, the jury recommended the death penalty, as Hill was found guilty of two counts of first degree premeditated murder and guilty of shooting into an occupied vehicle. [A231 - A235].

The Supreme Court of Florida, on November 27, 1996, affirmed the judgment of the trial court, with one dissent by Justice Anstead in the penalty phase which correctly criticized the majority's opinion that a statutory aggravator, which requires proof beyond a reasonable doubt, was found, and the case was thus incorrectly decided, as the majority found Hill was <u>not acting with a "pretense"</u> of moral justification, §921.141(5)(i), although it is unquestionable that Hill's motivation was based upon his moral justification in

opposition to abortion.

The Supreme Court of Florida found that the judge constitutionally conducted a Faretta hearing and that the judge correctly determined that Hill had knowingly and intelligently waived his right to counsel; it further found that Florida Rule of Criminal Procedure 3.111(d) had not been violated, as it held that the defense of justification is routine, and it specifically found that:

> As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity, that would lead us to conclude that Hill was unable to make a fully intelligent and understanding choice to waive counsel under Rule 3.111(d). [A 17].

On December 7, 1996, the Petitioner here, defendant below, moved the Florida Supreme Court for Rehearing which was denied on March 6, 1997 by a revised opinion. [A1 - A24].

JURISDICTION

By an indictment on August 9, 1994, Hill was charged with first-degree premeditated murder, one count of attempted first-degree murder, and one count of shooting into an occupied vehicle. The public defender filed a motion to withdraw and a motion for a Faretta hearing on September 26, 1994, both of which, after a perfunctory hearing on September 27, 1994 were granted on September 30, 1994 [A25 -

A37].

Hill was found guilty as charged in a case where he could not, and was not permitted to, offer his only defense. Hill received two death sentences [A231-A254] an appeal was timely taken based upon the violation of Hill's Sixth Amendment right to counsel, made applicable to the states by the Fourteenth Amendment, that violation based upon an invalid waiver to the right to counsel based upon the criteria set forth in Faretta v. California, 422 U.S. 806 as applied to the even more stringent Florida Rules of Criminal Procedure, §3.111(d).

A timely appeal was taken to the Florida Supreme Court which affirmed the judgment, with the dissent by one judge, on November 27, 1996, a timely motion to reargue was filed on December 7, 1996, [A255 - A277] and the motion for rehearing was denied on March 7, 1997 by the revised opinion of the Supreme Court of Florida [A1 - A24].

Pursuant to Supreme Court rule 13.1, this Petition has been filed within 90 days of the denial of rehearing, and this Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

The United States Constitution, Amendment VI provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.

The United States Constitution Amendment XIV provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Florida Constitution, Art. I, § 16(a) in pertinent part provides:

> In all criminal prosecutions, the accused shall...have the right...to confront at trial adverse witnesses, to be heard in person, by counsel or both...".

STATUTORY PROVISIONS INVOLVED IN THIS CASE

The Florida Rule of Criminal Procedure, Rule 3.111(d)(2) provides, in pertinent part:

> A defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into <u>both</u> the accused's <u>comprehension</u>... and...capacity to make an intelligent and <u>understanding waiver</u>;

3.111(d) further provides:

> No waiver shall be accepted if it appears

> that the defendant is unable to make an intelligent and understanding choice because of...the nature or complexity of the case...: [Emphasis added]

Florida Statute 776.012 (1993) provides that one is justified in using deadly force:

> ...only if he reasonably believes that such force is necessary to prevent imminent death...to... another...

§921.141(5)(i) holds that one of the factors that could be considered in aggravation is that:

> the capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. [Emphasis added]

STATEMENT OF THE CASE

In this case the Supreme Court of Florida has affirmed the judgment of the trial court in which Hill was found guilty of two counts of first-degree premeditated murder, one count of attempted first-degree murder, and one count of shooting into an occupied vehicle (Doc. 1). The error committed by the Florida Supreme Court effectively overrules Faretta v. California, supra and the Florida Rules of Criminal Procedure §3.111(d). Pursuant to

Faretta, the waiver of the right to counsel must be "voluntarily and intelligently" made. Id. at 807.

The Record of the judge's Faretta inquiry is presented in its entirety in the [A34 - A200; A278 - A299] is absolutely devoid of any inquiry whatsoever of Hill by the Judge which in any way satisfies the criteria as set forth in Faretta, supra, and the more stringent Florida Rule 3.111(d). There simply is no basis that Paul Jennings Hill made a knowing, intelligent, understanding and comprehensive waiver of his Sixth Amendment right to counsel as set forth in Faretta, nor is there any evidence in the Record that he made an intelligent and understanding choice because of the nature and complexity of the case and more particularly of the justification defense as required by Rule 3.111(d).

At trial, Hill asked no voir dire questions, objected to no voir dire questions asked by the State, waived his opening statement in the guilt phase of the trial, failed to cross-examine any witnesses, failed to offer any exhibits, failed to object to any exhibits, offered no witnesses, failed to object to any questions by the State of the witnesses, made no requests to charge, took no exceptions to the charge, although he attempted to articulate to the judge that he wanted to present the justification defense, the judge failed to explain why he was not permitted to do so. Thence, in response to the judge's critical question, Hill rested without offering any evidence; he waived his opening argument and rebuttal argument in the penalty phase of the case. Instead,

Hill's only substantive comment consisted of 67 words, which, due to Hill's failure to understand that which he purportedly "knowingly and intelligently" waived, was based on no evidence submitted to the jury, and thus it was worse than no statement at all.

On appeal, Hill moved to proceed pro se. The Florida Supreme Court ordered Judge Elzie Sanders to conduct a Faretta hearing to determine if Hill was able to proceed pro se. The Florida Supreme Court ruled, and this ruling is a judicial admission, by the Florida Supreme Court, that Hill could not waive the benefit of his Sixth Amendment right to counsel, [A299 - A302] holding:

> Counsel for the appellant is hereby advised that in order for the appellant to receive a meaningful appeal, the Court must have the benefit of an adversary proceeding with diligent appellant advocacy addressed to both the judgment and the sentence. [Slip Copy 1995 WL 368413, No. 1(Fla.)]. [A301].

Note that Judge Sanders approved out of state counsel [A303].

On appeal, the Faretta and Sixth and Fourteenth Amendment arguments together with Fla. R. of Cr. P. 3.111(d) were pursued.

On page two of its opinion, [A5], the Supreme Court of Florida held: "To achieve a valid waiver, a defendant must

be made aware of the dangers and disadvantages of self-representation, so that the defendant 'knows what he [or she] is doing', and...the choice is made with eyes open". The undersigned argued to the Florida Supreme Court that Hill was not afforded such a choice as the Record proves the judge did not explain to Hill what it was that Hill was waiving nor did he know how to present evidence on his only defense of justification. The Petitioner did not know how to use the legal process to present evidence on his only defense of justification. But more egregiously, as hill has argued, his rights to counsel were violated when he was precluded from arguing the justification defense by the trial judge's granting of the State's motion in limine which effectively precluded Hill from obtaining counsel to argue on his behalf literally minutes after the State presented Hill with its memorandum of law, and, effectively made sure Hill had to lose the case because he could not present the justification defense.

The Record (A34 - A200 and A278 - A299) proves the trial judge did not make Hill aware of the dangers and disadvantages of self-representation in this intricate justification defense case. When the Supreme Court of Florida holds: "In this case, the trial judge conducted an exhaustive inquiry before concluding that Hill's waiver was valid.", it is error, and the Record contradicts that holding. The Record is devoid of any such "exhaustive inquiry" made of Hill by the judge.

The most telling portion of the opinion below is at page A 11 of the Appendix:

> The State cites no Florida Appellate Court that has ruled on the subject of whether the defense of necessity or justification, whether it be common law or statutory, is available to a defendant whose crime was committed in opposition to abortion.

However, Statute 776.012 creates the justification defense to a charge of murder, which defense Hill desired to present in his case. He was unable to do so because he had no counsel. If the above quotation from the opinion does not prove that Hill needed, and could not waive, his right to counsel and that Hill was deprived of his Sixth Amendment right to counsel, then the new test in this country will be that the waiver of the Sixth Amendment right to counsel is mechanical, and that tears Faretta asunder.

The Court below states:

> However, the law outside this state, of which there is a significant body, is virtually unanimous on the subject. In every appellate court found to have considered the issue the defendants were precluded, as a matter of law from asserting the necessity or justification as defense to trespass violations committed in protest of abortion. [Emphasis added]. (A11)

That sentence equally illustrates the need for the defendants assistance of counsel. There is not a pro se in the United States that could research that issue, and, therefore the Sixth Amendment right to counsel, simply cannot be waived in such an intricate justification defense such as the one involved in this case. Indeed, the Florida Supreme Court treats the defense of necessity and justification as synonyms, which they are not.

There are two distinct affirmative defense statutes in Florida, necessity and justification, and the statute which Hill desired to use, and would have used if he had counsel, is 776.012 which provides that one is justified in using deadly force:

> ...only if he reasonably believes that such force is necessary to prevent imminent death...to... another....

This is not a statute that a lay person may utilize by compulsory process in this case where the application of the law to facts which must be produced only by the expertise of an experienced lawyer, as the Petitioner argued in the court below. That 1993 statute referred to in the Florida Supreme Court's opinion on page [A 12] is admitted by the Court below not to be identical to the defense of necessity. Can one seriously claim that Hill was interrogated as to waiving his right to counsel and that he knowingly and intelligently gave up such an intricate legal defense which requires research of the case law of the 50 states and all of the federal jurisdictions as

well. The answer must be in the negative.

Admitting that there was no Florida cases on the subject, the Florida Supreme Court went to other courts for cases on the necessity defense, which cases do not apply to the justification defense. The Florida Supreme Court clearly erred in holding that Hill was not acting with a pretense of moral justification, because the ill-fated 67 word "closing argument" by Hill proves that indeed he was acting solely and completely with moral justification:

> You have a responsibility to protect your neighbor's life and to use force if necessary to do so. In an effort to suppress this truth, you may mix my blood with the blood of the unborn and those who have fought to defend the press. However, truth and righteousness will prevail. And may God help you to protect the unborn as you would want to be protected.

Having precluded the use of the justification defense, and to permit Hill to make that 67 word comment, the trial court erred and the Florida Supreme Court erred, in holding that Hill's waiver of counsel satisfied Faretta and Rule 3.111(d). That comment to the jury clearly shows Hill had no knowledge whatsoever, nor the reason to or ability to possess the knowledge, of how to present the factual predicate necessary in order to proffer evidence to convince a jury that his actions were justified,

presents substantial evidence that Hill did not and could not have "knowingly and intelligently waived" that which he did not and could not know. You can't know what you don't know, and you can't waive that which you don't know.

As stated, the trial court further erred in concluding that Hill was not acting with a "pretense of moral justification" by not allowing him to present that defense with the assistance of counsel. As set forth by Justice Anstead in the dissent, "Section 921.141, Florida Statutes (1995), an aggravator must be established by proof beyond a reasonable doubt. As he further states: "obviously, the finding of one or more of the aggravators or mitigators is critical to any penalty analysis".

§921.141(5)(i) holds that one of the factors that could be considered in aggravation is that:

> the capital felony was a homicide and was committed in a cold, casualty and premeditated manner without any pretense of moral or legal justification. [Emphasis added]

The trial court was in error when it found this aggravator proven beyond a reasonable doubt and that error is compounded by the Florida Supreme Court's decision. It cannot be seriously questioned that Paul Jennings Hill acted under a pretense of moral justification, i.e., his moral opposition to abortion, and that, therefore precluded the application of that aggravator.

The Court contradicts itself on the

aggravator issue when it held [A15 - A16] of the opinion:

> Hill does not specifically contest any of the aggravating circumstances fund by the judge, although he inferentially suggests that the murders did not meet the criteria for being cold, calculated and premeditated because they were committed with the pretense of moral justification.

Of course Hill contests that issue-read his 67 word sound-bite!

This issue was squarely raised by Hill on appeal to the Florida Supreme Court, as Justice Anstead eloquently analyzed and found that Hill had argued a moral justification as shown by the 67 word sound-bite quoted in the majority opinion.

Again, it is not the test that the killer be morally or legally justified under the aggravator situation. The statute only requires that he have "some pretense of justification". Therefore, the Court was in error. In addition, as articulated by Justice Anstead, the majority erred in concluding that it was proven beyond a reasonable doubt that Hill acted <u>without any pretense of moral or legal justification</u>.

Hill's failure to offer any mitigating evidence of his otherwise exemplary life, which an attorney certainly would have if Hill had been represented, but because he was unrepresented, he was deprived of

that chance. The jury inquired of the judge [A304] "If jury recommends 'life imprisonment without parole', does the law allow in future years the defendant can be paroled"?, What a telling question!

That is further proof that Hill should not have been permitted to try to present this case himself. If that jury, with absolutely no help from Hill or anyone else, and, despite the non-performance from the defendant Hill, came that close to life with imprisonment, what would it have done with counsel to aid Hill in his defense, both as to the guilt and to the penalty phase of the trial?

There was a further egregious occurrence which mandated a mistrial, and now mandates a reversal of the judgment. When the State commented to the entire jury panel:

> Do all of you understand that the jury's only rule is to determine the facts and to apply them to the law and come back with a verdict, <u>it is the judge's decision to impose the decision of guilt or the decision of punishment. That is the judge's decision. It is not the jury's decision.</u> [Emphasis added]

Isn't that a comment that would have had any lawyer demanding a mistrial? Yet, Hill needed, but did not get a lawyer, and the <u>judge</u> never admonished the State, nor did the judge immediately correct this illegal, highly prejudicial,

statement by the prosecutor.

REASONS FOR GRANTING THE WRIT

The Decisions of the Circuit Court affirmed by the Supreme Court of Florida has so emasculated the case of Faretta v. California, 422 U.S. 806, in violation of the Sixth Amendment, made applicable to the states by the Fourteenth Amendment, that there is a dramatic, graphic, illegal change in the law whereby, if this decision is allowed to stand, it will be cited countrywide for the holding that the waiver of a defendant's Sixth Amendment right to counsel is a mechanical act.

In U.S. v. Harrison, 451 F. 2d, 1013 (1971), a lawyer who was permitted to try a case by himself when he had very little trial experience was found to have had his Sixth Amendment right to counsel violated because: the transcript was only 66 pages long; the cross-examination was totally inadequate [Hill had none]; the motion at the end of the trial was feeble, [Hill made none]; there were no pretrial motions [Hill's written motion was not permitted to be argued]; Harrison offered no evidence [neither did Hill]; he made no opening or closing statement [Hill was worse with three waivers of statements to the jury, then said 67 words which meant nothing]; Harrison had little knowledge of procedure and means to put on a defense [Hill had none]. As Harrison was found to be an invalid waiver, so should Hill's. As held by the federal court in Florida in Reilly Petitioner v. State of Florida, 847 Fed. Supp. 951 at 960:

No waiver will be accepted

> until the Court finds that the defendant is able to make an intelligent and voluntary choice...

That is precisely what did not happen in the instant case--the waiver should not have been accepted.

It is submitted that the Sixth Amendment right to counsel in: Powell v. Alabama, 287 U.S. 45, 50 [denial of the right to counsel with the accustomed incidents of consultation and opportunity of preparation for trial]; Gideon v. Wainwright, 372 U.S. 335, 342-343 [the right to the aid of counsel is of fundamental character] and 344-345, [the articulate words of Mr. Justice Southerland quoted from Powell, supra, as to the necessity of counsel]; Johnson v. Zerbst, 304 U.S. 459, 463 ["even the intelligent and educated layman has small and sometimes no skill in the science of the law"]; Argersinger v. Hamlin, Sheriff, 407 U.S. 25, 28 [is particularly appropriate in the instant case with the use of compulsory process]; Douglas v. California, 372 U.S. 353, 356 [the denial of the right to counsel cannot amount to a denial of due process]; Adams, Worden v. U.S. Exrel McCann, 317 U.S. 269, 277 [requiring an exhaustive inquiry before counsel can be dispensed with]; Glasser v. U.S., 315 U.S. 60, 70-71 [is particularly appropriate as the person denied the right to counsel was a lawyer]; VonMoltke v. Gillies, 332 U.S. 708, 720-731, [particularly page 728 commenting upon the difficulty of the case]; and Godinez, Warden, v. Moran, 509 U.S. 389, 392, 401 n.12 [where the Record must show the waiver proves the severe consequences of any waiver]; will be so

emasculated that the Sixth Amendment right to counsel will no longer exist.

Pursuant to Faretta, and its progeny, supra, the waiver must be "an intelligent and knowing" waiver, Id. 809; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. 814; he must "knowingly and intelligently" waive that right to counsel, Id. 835; the waiver of the right to counsel cannot be a "mechanical exercise", Id. 815-816. Further, the more strict Florida Rules of Criminal Procedure, Section 3.111(d) mandates that the judge may not accept a waiver of counsel until and unless "a thorough inquiry [be] made into both the accused's comprehension and understanding waiver, and (3) "no waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of the...nature and complexity of the case. [Emphasis added]. Clearly, the most complex and only possible intricate defense is justification in this case. That defense requires comprehensive legal research to proffer sufficient evidence, by skillfully utilizing compulsory legal process, to establish the factual predicate to prove that intricate defense. Florida Statutes (1993) 776.012 states that a person is justified in the use of deadly force if he reasonably believes that such force is necessary to prevent imminent death...to...another.[1]

---

[1] The justification defense is an affirmative defense which can only be utilized, particularly in the instant

case, by careful, legal research to determine what facts must be proffered, by the use of compulsory process, to establish the factual predicate in order to permit the justification defense to be offered at trial. Some of the compulsory legal process includes:

Discovery must be filed in order to obtain each current employee of the Center, so that each employee may be inquired of as to any illegal, improper, violations of statutes, regulations, policy, or the institution of directives which may lead to admissible evidence; so too, a list of former employees for the prior 10 year period must be obtained so that proper inquiry may be made of them which may lead to admissible evidence; discovery of employees of the state regulatory agency having jurisdiction over the Center must be obtained for the same purposes; former employees within the last 10 years of that state regulatory agency having jurisdiction over the Center must be obtained for the same purposes; current employees of the local regulatory agency must be ascertained by that process for the same purpose; former employees, a period of 10 years of the local regulatory agency must be obtained so that proper inquiry may be made of them, which inquiry may lead to admissible evidence concerning the defense in the instant case; compulsory process must be filed with the consumer agency of the state in order to ascertain if information has been filed with that agency which would lead to admissible evidence; similar inquiry must be made of the local consumer protection agency for the same reason; compulsory process must

be used with the surgeon general of the United States to ascertain if any material is present which might lead to admissible evidence; compulsory process must be lodged against the local police department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the local sheriff's department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the state police department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the FBI in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be filed with the coroner in order to ascertain whether admissible evidence may exist to aid in the instant defense; compulsory process must be used to obtain the name and address of any doctor who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any nurses who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any intake clerks who had performed services at the Center over the

last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any orderlies who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any medical aids who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any nurses aids who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any guard services who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used with the Center in order to ascertain who was present at the Center on the day in question in order to ascertain if an abortion that was going to take place did not take place; compulsory process must be used against the Center for the production of any of its records indicating the death of a mother during the abortive process; compulsory process must be used against the Center to ascertain if women change their minds so that a person is alive today that would not be alive had the women not change their mind; compulsory process must be used against the Center

to determine if any botched abortions took place; compulsory process must be used against the Center to determine whether the age of the fetus is such that it might lead to admissible evidence in the instant case; compulsory process must be filed against the Center in order to obtain the names and address of those persons who failed to have an abortion, as that might reasonably lead to admissible evidence; compulsory process must be utilized to obtain the names and addresses of current directors in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of former directors in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of officers in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of former officers in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process should be served upon physicians who have taken part in the abortion procedure at the Center in order to ascertain if any of the abortions might lead to evidence that is admissible in the instant proceeding; compulsory process must be filed against the Center concerning any complaints made against the Center which might lead to admissible

evidence in the instant proceeding; compulsory process must be filed against the Center in order to ascertain if any law suits have been filed against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the Center concerning any complaints made against the state agency which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the state agency in order to ascertain if any administrative claims have been filed against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the Local Agency concerning any complaints made against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the local agency in order to ascertain if any law suits have been filed against it concerning the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be lodged against the Center in order to determine which personnel of the Center should be produced for deposition purposes with a view towards information being obtained that would lead to admissible evidence; compulsory process must be issued against the Center in order to obtain the names of all persons who were present at the Center on the day in question in order that inquiry might be made to see if any admissible evidence is available, for example, a 3 year old child is alive today who would not have been, but for the defendant in the instant case. That is the type of factual predicate which must be produced by

Paul Jennings Hill should not have been permitted to waive his Sixth Amendment right to counsel, without the judge conducting a detailed inquiry into, Hill's sole defense to the crimes with which he was charged, and in which the Record shows the Judge knew Hill's only defense was justification as set forth in Fla. Stat. § 776.012 (1993). The judge, under both Faretta and Florida Rule 3.111(d) should have inquired of what Hill thought he was giving up when he wanted to proceed pro se. That was not done. Because it was not done, Hill's Sixth Amendment Rights have been violated and his convictions should be vacated and a new trial ordered. There is not a shred of evidence that Hill "competently and intelligently" waived his Constitutional right to assistance of counsel, Faretta, Id. at 814. Nor is there a shred of evidence that a "thorough inquiry was made into both Hill's comprehension and understanding"; nor is there a shred of evidence that Hill was "able to make an intelligent and understanding choice because of the...nature and complexity of the case."

As set forth in Faretta, Id. at 818, "In short, the Amendment constitutionalizes the right in an adversary criminal trial to make a defense as we know it." Certainly, that did not take place in the instant case. Indeed, the admonition in Faretta, Id.

Compulsory legal process in order to lay the required factual predicate. Respectfully, a pro se is unable to do that.

820, n. 15 "We do not suggest that this right arises mechanically from a defendant's power to waive the right to the assistance of counsel." Respectfully, the Petitioner's waiver is such a case that this Honorable Court foresaw might occur and has occurred <u>against</u> this Court's admonition.

It is respectfully submitted that to permit Hill to proceed without counsel, in fact and in law, particularly because of his non-participation in the case amounted to a plea of guilty, and he did not want to plead guilty.

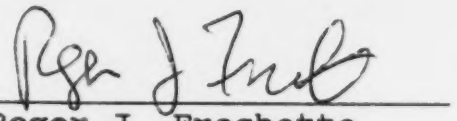
The Supreme Court ruled that the judge did not err in granting the State's Motion in Limine, but that Court seems to have confused the defense of necessity with the defense of justification, and cited necessity cases for its ruling that it was not error to grant the motion in limine, specifically finding that after the State rested Hill repeated his desire to present the defense afforded in § 776.012 Florida Statutes (1993), the justification statute. As appears on [A196 and A200], immediately after Hill stated he was not able to argue, the judge granted the state's motion in limine verbally, and then on October 26, 1991 signed an order so stating. As appears on page 232 of the Record.

In sum, the Florida Supreme Court concluded that the inquiry in this case complied with both <u>Faretta</u> and Rule 3.111(d), despite the fact that the record proves that the Florida Supreme Court's holding on this seminal issue requires reversal as <u>the Record [as to the Faretta issue, is quoted in its entirety in the appendix] proves no such</u>

inquiry was made as there was no compliance with Faretta or with the more stringent Florida Rules of Criminal Procedure 3.111(d).

Hill did not receive justice in this case; Hill was not afforded his constitutional rights, and no man should die under these Constitutional deprivations.

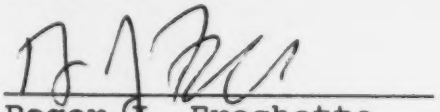
RESPECTFULLY SUBMITTED,

BY 

Roger J. Frechette
Pro Hac Vice
12 Trumbull Street
New Haven, CT 06511
Tel. No. 203-865-2133

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished via U.S. Mail to Richard Martell, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; Thomas A. Horkan, Jr., Esq., Post Office Box 1638, Tallahassee, Florida 32302; James Joseph Lynch, Esq., Post Office Box 336, Sacramento, California 95812-0336; and a copy mailed to Appellant, Mr. Paul J. Hill, #459364, Florida State Prison, P.O. Box 181, R-2-S-6, Starke, Florida, 32091 on this 4th day of June, 1997.



Roger J. Frechette

Supreme Court, U.S.
FILED
JUN 4 1997
OFFICE OF THE CLERK

No. 96-1957

In The
Supreme Court Of The United States

October Term, 1996

PAUL JENNINGS HILL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Counsel of Record for Petitioner:

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FRECHETTE & FRECHETTE, ESQS.
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(203) 865-2133

307 ap

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Roger J. Frechette

SUPREME COURT OF FLORIDA

THURSDAY, MARCH 6, 1997

PAUL JENNINGS HILL, Appellant,

vs. CASE NO. 84,838
Cir.Crt.Case No. 94-3510-3
(Escambia County)

STATE OF FLORIDA, Appellee.

The Motion for Rehearing filed by Appellant, having been considered in light of the revised opinion, is hereby denied.

A True Copy JB

TEST

Sid J. White
Clerk Supreme
Court
Lynch, Jr.

cc: Hon. Ernie Lee Magaha, Clerk
Hon. Frank Bell, Judge
Mr. Michael R. Hirsh
Mr. Roger J. Frechette
Mr. Matthew E. Frechette
Mr. Richard B. Martell
Mr. Thomas A. Horkan,Jr.
Mr. James Joseph

SUPREME COURT OF FLORIDA

PAUL JENNINGS HILL,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. 84,838

REVISED OPINION
[November 27, 1996]

PER CURIAM.

We have on appeal the judgment and sentence of the trial court imposing the death penalty upon Paul Jennings Hill. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const.

Early on the morning of July 29, 1994, Hill went to the Ladies Center in Pensacola, Florida, where he had been protesting against abortion for six months, and waited outside. About one hour later, a pick-up truck driven by James Herman Barrett, also containing his wife June Griffith Barrett and Dr. John Bayard Britton, arrived at the Center. The Barretts volunteered at the Center on the last Friday of every month. On those days, they met Dr. Britton at the airport and escorted him to the Ladies Center, which he visited every Friday to perform legal abortions. As the truck entered the parking lot, Hill was standing in the middle of the driveway. He moved to the side, allowing the truck to pass him. As the truck drove by, it came within

several feet of Hill, so that he was able to see the truck's occupants.

James Barrett parked the truck near the steps of the Center. As Barrett got out of the truck, Hill shot and killed him. Hill also shot and wounded June Barrett. He then moved closer to the truck before shooting and killing Dr. Britton. Hill was arrested shortly thereafter while walking away from the Center.

Hill was charged with two counts of first-degree premeditated murder, one count of attempted first-degree murder, and one count of shooting into an occupied vehicle. He pled not guilty to all counts. The Public Defender's Office was appointed as counsel. After Hill indicated that he wished to represent himself, the trial court conducted a hearing pursuant to Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1978). The trial court determined that HIll had knowingly and intelligently waived his right to counsel, and granted the Public Defender's motion to withdraw. However, the trial court also appointed the Public Defender's Office as "standby counsel" to aid Hill if he requested help and to be available to represent him in the event representation became necessary.

The State filed a motion in limine to prevent Hill from presenting a defense of necessity/justification. The trial court denied Hill's request to have an out-of-state attorney argue at the hearing on the Sate's motion, but renewed the offer of counsel, whereupon Hill reaffirmed his desire to represent himself. At trial, Hill repeated his desire to present the defense of justification or necessity, but the trial court did not permit it.

Hill's participation otherwise throughout the trial was minimal. He was subsequently convicted on all four counts.

The jury recommended a sentence of death on both counts of murder by a vote of 12-0.

The trial court's sentencing order found that the following two aggravators had been established beyond a reasonable doubt for both murders: (1) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person, as evidenced by the contemporaneous convictions; and (2) the murder had been committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. This second aggravator was proven with evidence establishing that Hill had stated previously that abortionists should be executed, had purchased a shotgun and ammunition two days before the murders and practiced at a firing range on two separate occasions during those two days, had modified the shotgun, had arrived at the Center one hour before the victims, and had proudly stood looking over the bodies after he shot them. With respect to Dr. Britton's murder, the trial court found a third aggravator of especially heinous, atrocious, or cruel, established by the agony Dr. Britton had to endure in having time to anticipate and contemplate his own imminent death while he watched Hill reload his gun and approach the Barrett's vehicle.

In statutory mitigation, the trial court found that Hill had no significant history of prior criminal activity.

Finding that the aggravating circumstances outweighed the mitigating circumstances presented, the trial court sentenced Hill to death on each of the two murder convictions.

Hill first contends that the trial court's inquiry did not meet the dictates of both Faretta and Florida Rule of Criminal Procedure 3.111(d) because he was not apprised of the difficulty and complexity involved in mounting the defense of justification. Specifically, Hill argues that the trial court did not inform him that because he was in jail, he would not be able to research, investigate, and obtain witnesses, thereby making it impossible for him to establish the factual predicate for his complex defense. Nor, Hill asserts, was he sufficiently educated and experienced int he law to understand how difficult it would be to present this defense.

In Faretta, the United States Supreme Court held that an accused has the right to self-representation so long as the right to the assistance of counsel is knowingly and intelligently waived. To achieve a valid waiver, a defendant must be made aware of the dangers and disadvantages of self-representation, so that the defendant "knows what he [or she] is doing and...[the] choice is made with eyes open." Faretta, 422 U.S. at 835 (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279(1942)). In Faretta, the Court was satisfied that the defendant in that case had knowingly and intelligently waived the right to counsel. The record showed that the defendant "was literate, competent, and understanding, and that he was voluntarily exercising his informed free

will." Id. The Trial judge had admonished the defendant that it was a mistake not to accept the assistance of counsel, and that he would be required to follow the rules of procedure. Id. at 835-36. In finding that the defendant's waiver was valid, the Court explicitly noted that a defendant's technical legal knowledge is irrelevant to the determination of whether he or she has made a valid waiver of the right to counsel. Id. at 836.

Rule 3.111(d)(2) precludes a trial court from finding a valid waiver "until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an intelligent and understanding waiver." Paragraph (d)(3) requires a trial court to reject a defendant's waiver "if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors."

In this case, the trial judge conducted an exhaustive inquiry before concluding that Hill's waiver was valid. He made sure that HIll knew the State would seek the death penalty. He made sure that Hill understood he would be in jail and therefore unable to prepare as well as counsel could on his behalf. The judge further explained that the legal system has its own terms of art and procedure that would be unfamiliar to a layperson. More importantly, he made sure that Hill would not expect any special help simply because he was

representing himself and that Hill knew he would be treated the same as an attorney. We conclude that Hill was adequately warned of the dangers and disadvantages of self-representation as required by Faretta.

The trial judge also inquired into HIll's age, education, and experience, as well as his physical and mental condition.[1] As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity that would lead us to conclude that Hill was unable to make a fully intelligent and understanding choice to waive counsel under rule 3.111(d). In any event, the prosecutor specifically explained to Hill that he might be thwarted in his efforts to present a defense if he could not

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[1] The assistant public defender who represented Hill at the Faretta hearing stated that he had no doubts based upon his dealings with Hill that Hill was competent to make the motion to represent himself. Hill told the trial judge that he would not cooperate with any court appointed medical doctors for an examination. The judge was not required to order a futile examination. Despite the absence of expert testimony on this issue, the record demonstrates that Hill's mental condition did not affect his ability to make an intelligent and understanding choice to waive his right to counsel. See Muhammad v. State, 494 So. 2d 969 (Fla. 1986), cert. denied, 479 U.S. 1101, 107 S.Ct. 1332, 94 L. Ed. 2d 183 (1987).

properly lay a foundation. Nor does the fact that this is a death penalty case make it so complex that a defendant cannot make an intelligent choice to represent him or herself. It was sufficient that the judge made sure that Hill knew the State would be seeking the death penalty. E.g., Hamblen v. State, 527 So. 2d 800 (Fla. 1988); Muhammad v. State, 494 So. 2d 359 (Fla. 1986); Goode v. State, 365 So. 2d 381 (Fla.), cert. denied, 441 U.S. 967,99 S. Ct. 2419, 60 L. Ed. 2d 1074 (1979).

In sum, we conclude that the inquiry in this case complied with both Faretta and rule 3.111(d). We emphasize that a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed pro so. As the Supreme Court stated in Godinez v. Moran, 509 U.S. 389, 399, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993), "the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself." Thus, the judge was not required to give Hill a lesson on how to try a lawsuit before finding that Hill was making a knowing waiver of his right to counsel. It was enough for Hill to be alerted generally to the difficulties of navigating the legal system, and in this case the inquiry went beyond the minimum requirements to warn Hill of the particular difficulty of laying a predicate for a defense.[2]

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[2] The safeguards of Faretta and rule 3.111(d) were extended throughout the

We next address Hill's argument that the trial court erred in granting the State's motion in limine.[3] Both the motion and the State's memorandum in support thereof sought to preclude Hill from presenting any evidence concerning abortion and his views on the subject as support for the common law defense of necessity or justification. Hill's memorandum in opposition did not directly address the State's argument but instead argued that Hill was entitled to present this evidence to establish the statutory defense found in section 776.012, Florida Statutes (1993), entitled "Use of force in defense of person." That statute states in relevant part:

> [A person] is justified in

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entire course of the trial: After a federal trial against Hill in which he represented himself, the trial judge in this case held a supplemental Faretta hearing to ensure that Hill still wished to represent himself after his experience in federal court. The trial judge renewed the offer of counsel throughout the entire case and at each stage of the proceedings against Hill, including the penalty phase. We also note that Hill indicated that he would elect to represent himself even if he did not have the benefit of standby counsel.

[3] We consider this issue preserved for review. At trial, after the State rested, Hill repeated his desire to present the defense afforded in section 776.012, Florida Statutes (1993).

> the use of deadly force only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another to prevent the imminent commission of a forcible felony.

While section 776.012 is not identical to the defense of necessity, see Linnehan v. State, 454 So. 2d 625 (Fla. 2d DCA 1984),[4] we find the case law cited by the State relevant to our analysis here, as both the necessity defense and section 776.012 contemplate that a defendant may

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[4] The essential elements of the necessity defense were recited in Linnehan v. State, 454 So. 2d 625 (Fla. 2d DCA 1984):

> [D]efendants must have reasonably believed that their action was necessary to avoid an imminent threatened harm, that there are no other adequate means except those which were employed to avoid the threatened harm, and that a direct casual relationship may be reasonably anticipated between the action taken and the avoidance of the harm.

Id. at 626 (quoting United States v. Cassidy, 616 F.2d 101,102 (4th Cir. 1979)).

act to prevent some "harm," even if the defendant's act otherwise would be unlawful. Linnehan, 454 So. 2d at 626; § 776.012.

The State cites no Florida appellate court that has ruled on the subject of whether the defense of necessity or justification, whether it be common law or statutory, is available to a defendant whose crime was committed in opposition to abortion. However, the law outside this state, of which there is a significant body, is virtually unanimous on the subject.[5] In every appellate court found to have considered the issue, the defendants were precluded as a matter of law from asserting necessity or

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5

Numerous courts have considered whether the necessity defense applies to abortion trespass cases and concluded that it does not. See City of Wichita v. Tilson, 855 P.2d 911, 916, (Kan.) (listing cases from 19 states and the District of Columbia), cert. denied, 510 U.S. 976, 114 S. Ct. 468, 126 L. Ed. 2d 420 (1993). See also United States v. Turner, 44 F.3d 900 (10th Cir.), cert. denied, 115 S. Ct. 2250, 132 L. Ed. 2d 258 (1995); Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3d Cir.), cert. denied, 493 U.S. 901, 110 S. Ct. 261, 107 L. Ed. 2d 210 (1989); State v. Rein, 477 N.W.2d 716 (Minn. Ct. App. 1991), review denied (Jan. 30, 1992); City of Missoula v. Asbury, 873 P.2d 936 (Mont. 1994); Jones v. City of Tulsa, 857 P.2d 814 (Okla. Crim. App. 1993); and State v. Horn, 377 N.W. 2d 176 (Wisc. Ct. App. 1985), aff'd, 407 N.W. 2d 854 (Wis. 1987).

justification as a defense to trespass violations committed in protest of abortion. For example, in City of Wichita v. Tilson, 855 P.2d 911 (Kan.), cert. denied, 510 U.S. 796, 114 S. Ct. 468, 126 L. Ed. 2d 420 (1993), one of the more recent cases on the subject, the Kansas Supreme Court opined:

> Regardless of what name is attached to the defense (and for the sake of simplicity we will refer to it as the necessity defense) one thing is clear: The harm or evil which a defendant, who asserts the necessity defense, seeks to prevent must be a legal harm or evil as opposed to a moral or ethical belief of the individual defendant.
>
> ....
>
> The courts have invoked several different rationales in rejecting application of the defense. The majority of courts reason that because abortion is a lawful, constitutionally protected act, it is not a legally recognized harm which can justify illegal conduct.

Id. at 914-916. We agree with Tilson and other cases holding that, as a matter of law, legal abortion is not a recognized harm and cannot be used to invoke the necessity defense. See Roe v. Wade, 410 U.S. 113,91 S. Ct. 705, 35 L.Ed. 2d 147 (1973); § 390.001, Fla. Stat. (1993).

For the same reason, abortion also cannot constitute "harm" under section 776.012.[6]

As a practical matter, permitting a defendant to vindicate his or her criminal activity in such a manner would be an invitation for lawlessness. As the court explained in Commonwealth v. Wall, 539 A.2d 1325 (Pa. Super. Ct.), appeal denied, 555 A.2d 114 (Pa. 1988), when faced with a similar argument:

> To accept appellant's argument would be tantamount to judicially sanctioning vigilantism. If every person were to act upon his or her personal beliefs in this manner, and we were to sanction the act, the result would be utter chaos. In a society of laws and not of individuals, we cannot allow each individual to determine, based upon his or her personal beliefs, whether another person may exercise her constitutional rights and then allow that individual to assert the defense of justification to escape criminal liability. We recognize that, despite our proscription, some individuals, because of

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[6] Our conclusion that abortion is not a legally cognizable harm disposes of the need to address whether an unborn fetus is "another" within the meaning of section 776.012.

> firmly held and honestly believed convictions, will feel compelled to break the law. If they choose to do so, however, they must be prepared to face the consequences. Thus, such private attempts to circumvent the law with the aim to deprive a pregnant woman of her right to obtain an abortion will not be tolerated by this Court.

Id. at 1329-30 (footnote omitted). Thus, we find no error in the trial court's granting the motion in limine.

Hill's other guilt phase arguments may be summarily rejected. There was no error in admitting the statement volunteered by Hill at the time of his arrest that "at least there will be no more babies killed there today," because the statement was not the result of custodial interrogation. Moreover, there was no objection to its admission at the trial. Likewise, there was no objection to matters occurring in voir dire and closing argument of which he now complains, and such perceived errors, even if they existed, were not fundamental in nature. There was also no objection to giving the standard jury instruction on excusable homicide and justifiable use of deadly force. In any event, the instruction was required in order to fully instruct on the crimes comprising homicide. See State v. Smith, 573 So. 2d 306 (Fla. 1990). The judge did not err in failing to instruct the jury on Hill's right not to testify because Hill specifically asked that such an instruction not be given. The

argument that the jury was permitted to see certain exhibits not in evidence is not supported by the record.

Finally, we discuss Hill's contention that he was unfairly limited in his defense during the penalty phase. After the State concluded its penalty phase case, Hill rested without testifying or presenting other evidence. The prosecutor then gave his closing argument. Thereafter, Hill began to address the jury by saying, "You have a responsibility to protect your neighbor's life and to use force if necessary to do so." At this point, the State objected on the grounds that the argument was irrelevant and did not go to any of the evidence admitted at trial. At the bench, the trial judge instructed Hill that closing arguments, whether at the guilt or penalty phase, must be relevant to the issues presented during that particular stage. The judge reminded Hill that he had agreed to abide by the court's rulings. Ultimately, the judge overruled the State's objection, reasoning that it likely had been made in anticipation of an attempt by Hill to raise the defense of justification or necessity. Thus, the judge stated:

> THE COURT: Quite honestly, at this point for the record I will take and overrule the objection. And I will give you the benefit of allowing you to make your point and argue your case, because it is very important, Mr. Hill.
>
> MR. HILL: Yes, sir.

> THE COURT: I will give you wide latitude to argue your case.

Hill then concluded his argument by saying:

> You have a responsibility to protect your neighbor's life and to use force if necessary to do so. In an effort to suppress this truth, you may mix my blood with the blood of the unborn and those who have fought to defend the press. However, truth and righteousness will prevail. And may God help you to protect the unborn as you would want to be protected.

Clearly, Hill was not prevented from presenting his case during the penalty phase.[7] He elected not to put on any evidence, and the only objection made to his closing argument was overruled. Moreover, there is no question that the jury was aware that he killed his victims in order to prevent them from performing abortions.

Hill does not specifically contest any of the aggravating circumstances found by the trial judge, although he

---

[7] The State's motion in limine was directed only toward precluding Hill from asserting justification or necessity as a legal defense at the guilt phase of the trial.

inferentially suggests that the murders did not meet the criteria for being cold, calculated, and premeditated because they were committed with the pretense of moral justification. However, in Dougan v. State, 595 So. 2d 1 (Fla.) cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 293 (1992), we upheld the same aggravating circumstance in the fact of a dissenting opinion which argued that a murder had been committed with a pretense of moral justification in order "to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection." Id. at 7. We stated:

> While Dougan may have deluded himself into thinking this murder justified, there are certain rules by which every civilized society must live. One of these rules must be that no one may take the life of another indiscriminately, regardless of what that person may perceive as a justification.

Id. at 6. In this case, the trial judge properly rejected the proposition that by killing persons in order to prevent them from performing legal abortions, Hill acted under a pretense of moral justification. Moreover, even if it could be said that the finding of this aggravating circumstance was in error, the error would be harmless beyond a reasonable doubt.

Finally, we conclude that the evidence fully supports Hill's conviction and that the death penalty ordered in his case does not suffer from a lack of

proportionality.
Accordingly, we affirm the convictions and sentences of death.

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING and WELLS, JJ., concur. ANSTEAD, J., concurs in part and dissents in part with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

ANSTEAD, J., concurring in part, dissenting in part.

I concur with the majority's resolution of all of Hill's claims of error as to his guilt and penalty phase proceedings save one: that the trial court did not err in finding a statutory aggravator that requires proof beyond a reasonable doubt that Hill was not acting with a "pretense" of moral justification.

In section 921.141, Florida Statutes (1995), the legislature has set out guidelines which the trial courts of our state must consider in determining whether death or life imprisonment is the appropriate penalty once a defendant is convicted of capital murder. Some of the matters set out in the statute may be considered in aggravation while others may be considered in mitigation. An aggravator must be established by proof beyond a reasonable doubt. Obviously, the finding of one or more of the aggravators or mitigators is critical to any penalty analysis.

In this scheme, the legislature has provided that one of the factors that could be considered in aggravation is

that: "the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification." § 921.141(5)(i)(emphasis added). The trial court found this aggravator proven beyond a reasonable doubt. This constitutes clear error. While there is abundant evidence in the record to support a finding that the murders here were "committed in a cold, calculated and premeditate manner," it is undisputed that Hill acted under a pretense of moral justification, i.e., his moral opposition to abortion, thereby precluding the application of this aggravator.'

8

Indeed, The Florida Catholic Conference, a statewide organization of Catholic bishops, has filed an Amicus Curiae brief supporting Hill's claim of error on this issue. In their brief, the bishops pointedly assert:

> Amicus condemns the killing of Dr. Britton and Mr. Barrett. But whether shooting Dr. Britton and his escort was the right thing to do is not the question before this Court. The legal question before this Court is whether Mr. Hill's deep and abiding beliefs that human life begins at conception, which beliefs are rooted solidly in the mainline religious and philosophical traditions of our country and our state, and which beliefs were the basis for Mr. Hill's acts, gave his actions at

In Holly v. Auld, 450 So. 2d 217 (Fla. 1984), this Court explained that while extrinsic aids and rules of statutory construction and interpretation are available to courts where statutes are ambiguously worded, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given it slain and obvious meaning." Id. at 219 (quoting A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157 (1931)). We further explained that courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power." Holly v. Auld, 450 So. 2d at 219 (quoting American Bankers LIfe Assurance Co. v. Williams, 212 So. 2d 777, 778 (Fla. 1st DCA 1968)(alteration in original). Accordingly, where a statute is clear and unambiguous, a court must enforce the law according to its terms and is precluded from construing the statute differently. See e.g., State v. Egan, 287 So. 2d 1 (Fla. 1973); Van Pelt v. Hilliard, 75 Fla. 792, 798-99, 78 So. 693, 694-95 (1918). That is our obligation here.

In Banda v. State, 536 So. 2d 221 (Fla. 1988), cert. denied, 489 U.S. 1087, 109 S. Ct. 1548, 103 L. Ed. 2d 852 (1989), we noted that the word "pretense" means "'something alleged or believed on

---

minimum a "pretense" of moral or legal justification.

slight grounds: an unwarranted assumption.'" Id. at 225 n.2 (quoting Webster's Third New International Dictionary 1797 (1981)). Thus, we interpreted the section 921.141(5)(i) "pretense" clause in a manner consistent with its plain meaning.' We also concluded that a defendant's own unrebutted statements may support the existence of a "pretense of moral or legal justification" unless, of course, those statements are "wholly irreconcilable with the facts of the murder." Id. at 224-25. Consistent with our opinions on this issue, one legal commentator has stated:

> The pretense clause means that even if one kills a victim in a cold and calculated manner, and if the killer thinks he is morally or legally justified in doing so, the aggravating factor should not apply. The killer need not actually be

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9

The cold, calculated and premeditated aggravator was enacted by the legislature in 1979. See Ch. 79-353, Laws of Fla. The staff analysis for this statute does not address or discuss the "pretense" clause contained in the statute. Accordingly, we must assume that the legislature meant what it said when it explicitly used the word "pretense" in section 921.141(5)(i). See Florida State Racing Commission v. Bourguardez, 42 So. 2d 87,88 (Fla. 1949).

> morally or legally justified; the statute only requires that he have some pretense of justification. Indeed, paragraph (5)(i) could not logically require actual legal or moral justification as there is no actual legal or moral justification for a cold and calculated killing. Thus it makes no sense to maintain that the clause calls for this interpretation.

Jonathan Kennedy, Florida's "Cold, Calculated and Premeditated" Aggravating Circumstance in Death Penalty Cases, 17 Stetson L. Rev. 47, 101 (1987). Further, we have not hesitated to find this statutory aggravator not proven in other cases where we found that the defendant had acted under some "pretense" of moral or legal justification. See, e.g., Christian v. State, 550 So. 2d 450 (Fla. 1989); Ross v. State, 474 So.2d 1170 (Fla. 1985); Cannady v. State, 427 So.2d 723 (Fla. 1983); Blair v. State, 406 So.2d 1103 (Fla. 1981).[10]

10

[10] The majority has erroneously characterized Justice McDonald's dissenting opinion in Dougan v. State, 595 So. 2d1 (Fla.), cert. denied, 506 U.S. 942, 113 S. Ct. 383, 121 L. Ed. 2d 293 (1992), as disagreeing with the Dougan majority decision upholding the finding of the CCP aggravator. Justice

We must remember that the issue before us is not whether we tolerate or condone murder. That we do not approve of Hill's conduct is firmly established by our unanimous affirmance of his conviction for two capital murders, as well as our affirmance of the trial court's order on Hill's motion in limine and our rejection of his claimed necessity defense. As the majority correctly explains, Hill's religious belief that abortion is evil is not legally cognizable as a "necessity" defense under the common law or section 776.012. Nor is it an actual justification for Hill's blatant criminal conduct.

The only issue under discussion is whether a discrete aggravating circumstance specifically defined by the legislature has been established by proof beyond a reasonable doubt. The

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McDonald's separate opinion expressly agrees that the evidence was sufficient to support the CCP aggravator. His entire opinion is focused on the issue of proportionality. Further, the quote from Dougan relied upon by the majority also comes from a discussion of proportionality, not CCP, and in fact was specifically focused on a claim that the Dougan murder should be classified with murders taking place in an emotional domestic setting. There was no colorable claim of moral or legal justification in Dougan. The Court was unanimous in Dougan in approving CCP and rejecting what was at most an attempt to claim a political justification. Dougan is wholly dissimilar and distinguishable from the circumstances here.

legislature obviously meant something when it imposed the "without pretense" condition as a qualification for invocation of the aggravating factor set out in section 921.141(5)(i). If there was not "a pretense of moral...justification" here, it is doubtful whether these words could ever have any real meaning or application. Inexcusable though his conduct may be, it is undisputed that Hill acted under a pretense of moral justification; and a pretense is all section 921.141(5)(i) requires in order to preclude the application of this particular aggravator. For that reason, I cannot agree that this aggravator was properly invoked in this case.

An Appeal from the Circuit Court in and for Escambia County,
Frank bell, Judge - Case No. 94-3510-J

Michael R. Hirsh, New Haven, Kentucky, and Roger J. Frechette, New Haven, Connecticut,

for Appellant

Robert A. Butterworth, Attorney General and Richard B. Martell, Chief, Capital Appeals, Tallahassee, Florida,

for Appellee

Thomas A. Horkan, Jr., General Counsel, Tallahassee, Florida,

for The Florida Catholic Conference, Amicus Curiae

James Joseph Lynch, Jr., Sacramento, California,

for the Friends of Paul Jennings Hill, Amici Curiae

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO.: 94-3510-J

PAUL JENNINGS HILL,

Defendant./

MOTION FOR FARETTA HEARING AND MOTION TO WITHDRAW

COMES NOW the Public Defender, through the undersigned Assistant Public Defender, and says:

1. Defendant, PAUL JENNINGS HILL, has been indicted for First Degree Premeditated Murder.

2. At his first appearance on July 30, 1994, he was found to be indigent and eligible for the services of the Public Defender, and the office of the Public Defender was appointed.

3. Defendant has expressed his desire to represent himself and has stated that

he does not wish to be represented by the Public Defender.

WHEREFORE the Public Defender requests that the Court hold a hearing pursuant to Faretta v. California, 422 U.S. 806, 45 L. Ed 2nd 562, 95 S.Ct. 2525 (1978) to determine whether Defendant may represent himself. If the Court finds that Defendant may represent himself, the Public Defender requests that he be allowed to withdraw from his appointment in this case and have no further responsibility for representing or advising Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to Jim Murray, Assistant State Attorney, 190 Governmental Center, Pensacola, Florida, by delivery this September 26, 1994.

JACK BEHR, PUBLIC DEFENDER

S\EARL D. LOVELESS
EARL D. LOVELESS, #243183
Assistant Public Defender
190 Governmental Center
Pensacola, Florida 32501
Phone: (904) 436-5400
Ext. 206
Attorney for Defendant

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs. CASE NO. 94-3510

PAUL JENNINGS HILL,
Defendant.

==========

ORDER ON PUBLIC DEFENDER'S MOTION TO W1THDRAW AND THE DEFENDANT'S MOTION FOR SELF-REPRENSENTATION

These proceedings were conducted consistent with 3.111(d)(3), Fla. R. Cr. Pr., and in accordance with the requirements of Faretta v. California. 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

Present at the hearing on September 27, 1994, were Mr. Jim Murray, Assistant State Attorney, and Mr. Dee Loveless and Mr. Peter France, counsel for the Defendant, from the Public Defender's Office for the First Judicial Circuit for the State of Florida. The Defendant

was also personally present.

The Public Defender's Office has filed a Motion to Withdraw from representing their Defendant based upon the Defendant's Motion for Self-Representation. The Public Defender's Office also requested that the Court not appoint the Public Defender's Office as standby counsel if the Defendant is allowed to represent himself at trial.

The Defendant has filed through his attorney a motion to represent himself at trial In determining whether his decision to represent himself Is intelligently and knowingly reached, the Court has heard testimony from Mr. Hill first as to his present and past health and physical condition, his emotional and mental health, stability, age and education level. This Court need not reach the merits of the reasons upon which Mr. Hill wishes to represent himself. This Court finds the Defendant, Paul Jennings Hill, to be confident, competent, articulate and intelligent, well educated and with appropriate demeanor for the courtroom setting and a more than adequate ability to express himself.

This court has discussed with Mr. Hill the overwhelming disadvantage of

self-representation, and the complexity of the discovery process. Mr. Hill has been advised of his right to private or appointed counsel and asserts that he wishes absolutely to represent himself at the trial proceedings.

Although the Defendant has not previously represented himself in either civil or criminal proceedings, this Court observes that he has the ability to understand legal concepts and the Rules of Criminal Procedure. Mr. Hill advises the Court that should his motion be granted to represent himself, he has available a law library at the Escambia County Jail.

Based upon the testimony and the entire record of the Faretta Hearing, the Court finds as follows:

1. Mr. Paul Hill, the Defendant, is capable of waiving, and has knowingly

and intelligently, waived counsel for the trial process, is capable of pro se representation, and he should, therefore, be allowed to proceed pro se.

2. The Public Defender's Office for the First Judicial Circuit of Florida is appointed "standby counsel" to aid the Defendant if and when the Defendant requests help, and to be available to represent the Defendant in the event that termination of the Defendant's self-representation is necessary. As "standby counsel," the Public Defender's Office should continue to be involved in the trial process to the extent that a delay or continuance will not be required in the event that termination of the Defendant's selfrepresentation is necessary.

DONE AND ORDERED in Escambia County, Florida this the 30th day of September, 1994.

/S/
FRANK L. BELL
CIRCUIT JUDGE

Copies furnished to:

Paul Jennings Hill, c/o Escambia County Jail

James Murray, Assistant State Attorney
Dee Loveless, Assistant Public Defender
Peter France, Assistant Public Defender

PROCEEDINGS

THE COURT: I think that the first thing we wanted to handle in relation to Mr. Hill was really the public defender's motion on their motion to withdraw, because I think as announced yesterday you would like for Mr. Hill to know before he made his decision whether or not there would be standby counsel or whether or not there would not be. Is that a fair assessment of what you're doing procedurally?

MR. LOVELESS: Yes, sir, if -- we have no objection, whichever way the Court wants to do it. That's fine with us, Your Honor.

THE COURT: Well, Mr. Murray?

MR. MURRAY: I don't have any objections, Your Honor.

THE COURT: Okay.

MR. MURRAY: I don't know that you really have any standing to talk one way or the other. I have a single case.

THE COURT: Let's -- let's hear -- let's hear what the Public Defender's Office has to say on really your motion to withdraw.

MR. LOVELESS: Your Honor, as to the motion to withdraw that was -- that is filed because of

the indication that Mr. Hill, that he wishes to represent himself, that's the -- that's the basis for the motion to withdraw, Your Honor. Based upon that, we feel obligated obviously to honor our client's wish.

THE COURT: Well, let me hear what you have to say on the secondary motion of whether or not the Public Defender's Office can serve as standby counsel in the event that Mr. Hill would be granted his motion to self-representation.

MR. LOVELESS: Your Honor, the only cases that we are aware of, that speak anywhere close to the area are two. Behr vs. Gardner, which is 9 -- excuse me, 442 So. 2d 980, which I'm sure the Court is very much aware of, and Mr.

Murray is as

16 well. Where there was an attempt made to appoint

17 the Public Defender's Office to represent an

18 insolvent defendant who also had private counsel,

19 the ruling of the Court was that it does not

20 permit the appointment of the public defender as

21 co-counsel with privately retained counsel. We

22 would suggest to the Court that in that particular

23 case since the defendant was insolvent, that the

24 Court should also apply that to situations where

25 defendant wishes to act as his own counsel.

The only other case, Your Honor, that we're aware of that speaks to that issue is a case called Hammond vs. State, 264 So. 2d 463, it's a Fourth DCA case, 1972, which speaks specifically to the issue, the public defender is entitled to serve as counsel in the usual and ordinary ways, to excise professional judgment. There is not and neither should there be any requirement for the appointment of assisting counsel as suggested here by the defendant and is discussed in a Law Review article.

That based upon those, that particular case, Your Honor, it's still the law in the State of Florida. It has not and this case has never been overruled. As far as I can tell,

the issue

has not been brought directly to any appellate

court since that time. We feel that basically on

these two cases, Your Honor, that our position is

in addition to the language of Chapter 27, which

is discussed in the cases, which indicates that we

are appointed to represent persons, we are not

appointed to assist in their representation of

themselves. That's all I have, Your Honor.

THE COURT: What would the State like to

say?

MR. MURRAY: Judge, I found one additional case that I think the Court and Mr. Loveless has.

It talks about hybrid representation. That is cited at 576 So. 2d 927, Stanton vs. State, (sic) and that is a Fifth District Court of Appeal case, 1991, in which we agree with the State that Faretta does not entitle the defendant to a hybrid representation. There's no constitutional right of the defendant to choreograph special appearances by counsel. And that was a situation in which there was a request for self-representation, but also standby counsel, and the Court may want to consider that case.

But the law that I think probably deals directly with this issue is in the

Faretta
decision, and it's in a footnote in Faretta in a

majority opinion in which, of course, the State --

and they're talking about the trial court, even

over objection by the accused appoint standby

counsel to aid the accused if and when the accused

request help and be available to represent the

accused in the event that termination of the

defendant's self-representation is necessary. And

they're talking about a defendant who would begin

to engage in misconduct within the courtroom.

So really what we're talking about here is a Sixth Amendment right, and I think under the law clearly the Court has the power and the authority to appoint standby counsel. Now, whether that's going to be the Public Defender's Office or somebody else would be up to the Court, and I guess Mrs. Loveless will probably want to address that. But, you know, under the majority opinion, the United States Supreme Court under Faretta, you know, it's my opinion, Judge, that you have that power. Whether or not the defendant chooses to avail himself of it is the defendant's choice, in the event he decides to exercise his right to be represented by counsel. That's footnote 46 and

it's the lawyers edition, it's at page 581

Faretta.

MR. LOVELESS: Obviously we concur with Mr. Murray's assessment there, and to make it clear, our situation, we are not indicating to the Court that the law is that the Court does not have that power. We're speaking only to the appointment of the Public Defender's Office.

THE COURT: I understand. Let me ask you a couple of questions, Mr. Loveless, that has come up before I think on a couple of matters that I

dealt basically with Mr. France and since Mr. France is ordinarily in my division most of the time, Mr. France and Mr. Hall. Is that the Florida Statutes that you refer to about appointing the public defender, there's no language in there that prohibits a Court from appointing the Public Defender's Office as standby counsel.

MR. LOVELESS: No, sir, not specifically, that's correct.

THE COURT: All right. In the cases that you really are talking about on the Behr case, was like co-counsel when the person had a private attorney and public defender is appointed to act as co-counsel as opposed to standby counsel.

MR. LOVELESS: That is correct.

THE COURT: Do you know of any authority whatsoever that prohibits a Court from appointing the Public Defender's Office as standby counsel?

MR. LOVELESS: No, sir. That -- that -- I can state to the Court that that does not exist.

That authority does not exist.

THE COURT: Let me ask you this question.

The Public Defender's Office is funded by the taxpayers?

MR. LOVELESS: Yes, sir.

THE COURT: You are very, very experienced in handling capital cases?

MR. LOVELESS: Yes, sir.

THE COURT: You've handled many, many, many capital cases?

MR. LOVELESS: I personally have, yes, sir.

THE COURT: And Mr. France, over his career, has handled quite a few capital cases?

MR. LOVELESS: Yes, sir.

THE COURT: Because of the nature of working with the Public Defender's Office and because of your abilities, you have over the years been assigned many serious first degree murder cases?

MR. LOVELESS: Yes, sir.

THE COURT: Okay. And each and every time

that you were assigned those cases, you were

assigned those cases as a public defender?

MR. LOVELESS: That's correct.

THE COURT: And you gained that experience

as a result of taxpayers paying you?

MR. LOVELESS: Every case that I have tried

has been as an assistant public defender, yes,

sir

THE COURT: I ask this basic question. If standby counsel is going to be appointed for Mr. Hill or for any other defendant, why should the taxpayers of the State of Florida pay private attorneys to come in and act as standby counsel that's not nearly as experienced as you are when you are already being paid by the taxpayers of the State of Florida? Why should they pay some private attorney when you already are being paid and you have greater experience than the private attorneys?

MR. LOVELESS: Indicate to the Court two things. First, that the premise is that standby counsel should be appointed. My personal belief, Your Honor, is that standby counsel

should not be

16 appointed.

17 THE COURT: Faretta -- Faretta recommends

18 standby counsel.

19 MR. LOVELESS: Well, Your Honor, I'm not

20 sure I would agree with the Court there. I think

21 Faretta says that the Court may do that.

22 THE COURT: Did they not say in Faretta

23 that the better procedure would be standby

24 counsel?

25 MR. LOVELESS: Yes, sir. And the Bar

Association -- as a matter of fact, the American Bar Association has indicated they prefer that that occur. My personal beliefs are opposite to that.

THE COURT: Well --

MR. LOVELESS: But regardless, Your Honor --

THE COURT: In all -- in all due respect, let's don't necessarily talk about personal opinions. Let's talk about what the law is.

MR. LOVELESS: Yes, sir. But the reason I bring that up, Your Honor, is because of I believe that it is -- it is improper for the defendant and for the system itself to indicate to them that they should be encouraged to represent themselves because standby counsel will be

available. I

17 don't think that is -- that is proper for the

18 person charged. I don't think that is proper for

19 the system.

20 The reason it's not proper for the system,

21 Your Honor, is because it assumes the basic

22 premise that the person appointed as standby

23 counsel will be available to step in at any time

24 assuming that the person making the election now

25 decides that he wants that assistance. That is --

that is a fallacy, Your Honor, that should -- that should not be part of the reasoning here. That a person appointed as standby counsel cannot prepare the case, cannot do any preparation that would permit him to be able to step in during the middle of a trial and take over. If I were to do that and the Court then in the middle of the trial were to ask me to step in, my first reaction to the Court is I'm going to ask for a mistrial and a continuance in order to be able to prepare the case.

THE COURT: In all due respect, the logic and the rationale of what you're saying, Faretta, which was decided by the United States Supreme Court, says the better procedure is

to appoint

16 standby counsel. That is the law.

17 MR. LOVELESS: I agree.

18 THE COURT: That is the law in the United

19 States of America.

20 MR. LOVELESS: I agree, Your Honor.

21 THE COURT: Even though you personally

22 don't agree with it, would you agree that that is

23 the law?

24 MR. LOVELESS: I agree that that is the

25 present status of the law, Your Honor.

THE COURT: Although you personally don't believe it --

MR. LOVELESS: Your Honor --

THE COURT: -- or don't like it?

MR. LOVELESS: In some case in my representations of my clients, one of my duties is to fight what is perceived to be the law at the present time.

THE COURT: I understand. But you do agree that that is the law --

MR. LOVELESS: Yes, sir, I do agree.

THE COURT: -- in the State of Florida and in every other state in America?

MR. LOVELESS: I do agree -- well, I can't say every other state. In the State of Florida and as to the United States Constitution as to federal procedures, yes, sir.

THE COURT: Does anybody else want to say

anything on this question of standby counsel?

MR. MURRAY: I think what Faretta

envisioned, Your Honor, is really kind of an

insurance policy for a number of different

reasons, I can think of off the stop of my head.

One, of course, if the defendant began to engage

in misconduct, it would allow the trial to go on

and would not require a mistrial. Two, it does

provide to the defendant access, doesn't have to

use it, but it's continuing access to the advice

and guidance of counsel. And then in the event

that he were to change his mind midstream during

the middle of the trial and now suddenly want a

lawyer, it allows the trial to continue in a

timely and orderly procedure.

So it -- I think there's three good

reasons. I mean, it does -- standby is a

difficult position, I think the Court recognizes

that and I think that's really what Mr. Loveless

is trying to get across is it's nearly an

impossible position for a lawyer to be in. But on

the other hand, what we're talking

about here is a

16 Sixth Amendment right, and the United States

17 Supreme Court struggled with this right from the

18 very beginning, as to whether or not we can force

19 counsel on somebody. And that came up and it's

20 still the law, as the Court pointed out. The

21 bottom line is standby counsel is the approved

22 procedure.

23 THE COURT: I don't disagree with the

24 rationale, the logic of what you're saying.

25 MR. 10VELESS: I understand, Your Honor.

Your Honor, may I make one more statement for the record and I -- as to our particular position, the other reason that I have a problem with the standby counsel is that by itself would make whichever attorney that would be assigned responsible for -- attempt to be responsive to the client. That has a great danger of significantly interfering with that attorney's ability to represent any other clients that he has. And as the Court is aware of our case load, if we have a person like that that expects us to be at their beck and call, it would create problems for us far beyond any other ordinary attorney.

THE COURT: I understand and appreciate it.

MR. LOVELESS: Thank you. That's all I

have, Your Honor.

THE COURT: Okay. Let me just state for

Mr. Hill's benefit at this point. At this -- at

this point until we go forward with the rest of

the motion that we have today, which is basically

his motion for self-representation, at this point

I really have not decided on the issue on the --

on the standby counsel. I want to ask you, Mr.

Hill, if you don't have standby counsel available

Do you, do you still want to represent yourself?

THE DEFENDANT: Absolutely.

THE COURT: If you do have standby counsel,

do you still want to represent yourself?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Let's move to the -- his

motion as to self-representation. Mr. Hill, what

I would like for you to do, I know you're kind of

in a bad situation. What I would like for you to

do is if you would come up here for me, sir, up

front. Right in there is fine, Mr. Hill. Let me

see if we can get a couple of things just kind of

clear on the record. It is true that you want to

represent yourself on the case that's pending

against you, which is 94-3510, which is two counts

16 of first degree murder and I think one count of

17 attempted first degree murder. Is that true?

18 THE DEFENDANT: That's correct, Your Honor.

19 THE COURT: You also understand that the

20 Court has previously appointed the Public

21 Defender's Office to represent you? I mean, you

22 know that, don't you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You also know that every

25 defendant in felony charges have a right to have

an attorney, if they can't afford to have an attorney, an attorney is appointed to represent them, you understand that?

THE DEFENDANT: I'm familiar with that, yes, sir.

THE COURT: And early on in this case the Public Defender's Office was, in fact, appointed to represent you and right now are representing you .

THE DEFENDANT: I understand that to be the case, yes, sir.

THE COURT: Do you understand that Mr. Loveless, what I stated earlier in conversation when we were talking about the standby counsel, do you understand that Mr. Loveless is a very experienced, able, qualified advocate

to represent

17 defendants in capital cases and in which the State

18 is seeking the death penalty?

19 THE DEFENDANT: I don't believe there's any

20 question to that, sir.

21 THE COURT: Do you understand that Mr.

22 France, who is also with the Public Defender's

23 Office, has in the past represented defendants in

24 capital cases and in very serious charges, and

25 that Mr. France is qualified and capable?

THE DEFENDANT: Yes, sir.

THE COURT: You have a problem with that?

THE DEFENDANT: None whatsoever.

THE COURT: Do you understand that Mr. Murray, Jim Murray with the State Attorney's Office, is assigned to prosecute this case, and that Mr. Murray has handled many serious cases, capital cases, and that Mr. Murray is a very skilled, qualified, competent advocate in the courtroom?

THE DEFENDANT: Probably universally granted, sir.

THE COURT: So you know that?

THE DEFENDANT: Yes.

THE COURT: Before I start asking you a lot of questions, and I'm going to ask you a lot of

17 questions, I would like to really know why you

18 want to give up two able, competent lawyers

19 defending you on a case in which I was told

20 yesterday that the State of Florida is seeking the

21 death penalty, why you would want to give that up

22 to represent yourself against an advocate, Mr.

23 Murray, representing the State of Florida, people

24 of the State of Florida, why you would want to do

25 that with the consequences of what you could be

facing in this particular case

THE DEFENDANT: I certainly have a variety

of reasons, sir, and I wouldn't care to go into

any of the intricacies of them.

THE COURT: Well, speak in generalities.

THE DEFENDANT: I believe it would be the

best course of action for me at this given time.

THE COURT: To give up two able defense

counsels that are dedicated to presenting your

best side against a skilled advocate for the other

side to represent your -- to give that up, you

think that's in your best interest?

THE DEFENDANT: No question, sir, that a

decision like this is one that you approach with

fear and trepidation and with much consideration

16 and prayer and after availing yourself of much

17 counsel, and I assure you I have done those things

18 and I'm still determined that this is the

19 direction which I would like to pursue.

20 THE COURT: I'm not saying it's not the

21 direction that you want to pursue.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The question is, you say you

24 think it's in your best interest.

25 THE DEFENDANT: Yes, sir.

THE COURT: How can that be in your best interest to give up two skilled defense attorneys to represent yourself against a very skilled, qualified prosecutor? How can that be in your best interest?

THE DEFENDANT: Like I said, there are a number of reasons.

THE COURT: I don't want you to be specific, because obviously you don't want to be specific with me.

THE DEFENDANT: Yes, sir.

THE COURT: But speak in general terms as to how that would be in your best interest.

THE DEFENDANT: I believe it will ultimately accomplish my ultimate end, my goal.

THE COURT: Your ultimate goal?

THE DEFENDANT: Yes, sir.

THE COURT: What is your ultimate goal?

THE DEFENDANT: To glorify God and enjoy

Him forever.

THE COURT: So that is the purpose of this

as you view the trial?

THE DEFENDANT: Yes, sir, that should be

the purpose of every rational being at all times,

glorify God, yes, sir.

THE COURT: And you think you can better do that by representing yourself as opposed to having Mr. Loveless and Mr. France represent you, two skilled advocates?

THE DEFENDANT: That's correct, sir.

THE COURT: How would they diminish your ultimate purpose by representing you? How would they diminish your goal?

THE DEFENDANT: I don't care to discuss it, sir.

THE COURT: Well, is there any way that you could enlighten me on how they might diminish your goal if they represented you and were committed to defending you in a very serious case?

THE DEFENDANT: Like I said, sir, I don't think I care to go into particulars.

THE COURT: The charges against you, Mr. Hill, are very serious, and you know that, don't you?

THE DEFENDANT: Yes, sir.

THE COURT: You know you're charged with two counts of first degree murder in which I think it was put on the record yesterday or it was advised in open court yesterday that the State of Florida be seeking the death penalty in those

cases, you understand that, don't you?

THE DEFENDANT: Yes, sir.

THE COURT: And I think there's one count of an attempted first degree murder and the -- I don't know what the maximum penalty would be in that, maybe a life sentence, a life sentence on the attempted first degree murder. You understand that, don't you?

THE DEFENDANT: Yes, sir.

THE COURT: What do you know about the legal system as to whether or not it's very complex or whether or not it s very simple? What do you know about that?

THE DEFENDANT: I suppose the legal profession is like any other, it's very complex

until you understand it and then it becomes

relatively simple in some senses, I'm sure.

THE COURT: Do you think you understand the

legal process and the legal system?

THE DEFENDANT: No, sir, I don't make any

pretense of understanding American jurisprudence.

THE COURT: I'm not asking you whether or

not I think you're an expert in the area. I'm

asking you whether or not you think you understand

even the basics of it?

THE DEFENDANT: I am confident that I understand enough to a accomplish my purposes, yes, sir.

THE COURT: Well, do you think you understand the rules of procedure, the rules of criminal procedure, the rules, the substantive law that's involved in a case like this?

THE DEFENDANT: How much knowledge is required of me, sir, in order to represent myself?

THE COURT: That's what I'm asking you. Do you think you understand the rules of procedure, criminal procedure and the rules of substantive law that's applicable in a case like this?

THE DEFENDANT: I definitely understand enough, yes, sir, to be able to represent myself,

16 yes.

17 THE COURT: Have you ever represented

18 yourself before?

19 THE DEFENDANT: Not in a civil court, no,

20sir.

21 THE COURT: What about in a civil court or

22 a criminal court anywhere?

23 THE DEFENDANT: I represented myself in a

24 church court before.

25 THE COURT: Church court?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. What did that involve?

THE DEFENDANT: I don't care to go into the details, sir.

THE COURT: Didn't involve a criminal case, did it?

THE DEFENDANT: That's correct.

THE COURT: That involved some type of violation of church rules as to whether or not ordaining would still be -- whether or not you would be ordained or not ordained, that type of thing?

THE DEFENDANT: You're missing the mark, sir, but --

THE COURT: Tell me how I'm off the mark.

THE DEFENDANT: I don't care to discuss it,

sir.

THE COURT: Okay. So church law is what we're talking about?

THE DEFENDANT: Yes, sir. I have -- I understand the church's judicial proceedings, I have conducted several trials.

THE COURT: Have you ever -- have you ever done any legal research?

THE DEFENDANT: As to American

jurisprudence, no, sir.

THE COURT: Do you even know where to begin

to do legal research?

THE DEFENDANT: I suppose based on my

previous experience in doing research, that I

could -- I could muddle around and know where to

begin, yes, sir.

THE COURT: Do you even know what the

issues are in a complex case to begin research?

THE DEFENDANT: I think I'm certainly -- I

know enough to be representing myself, yes, sir.

THE COURT: Of course you're in jail right

now and you have no bond on you. What limitations

or hinderances do you think that would have in you

representing yourself as opposed to having counsel

not in jail, that's out free to go about and do

the legwork and all the other things that have to

be done to prepare a case for trial?

THE DEFENDANT: I'm sure you would know

better than I, sir, but I'm sure that it would in

some measure inhibit me as opposed to if I were

not in jail.

THE COURT: Well, have you considered that,

the fact that you're in jail, that you're not out

of jail, that you 're not free to -- as an attorney

would be to pursue anything that might come up?

Have you even considered that?

THE DEFENDANT: Oh, yes, sir.

THE COURT: And what conclusions did you come to in your considerations?

THE DEFENDANT: I've -- I concluded that I can best pursue my own defense by representing myself.

THE COURT: I see. Have you ever even tried to do any legal research?

THE DEFENDANT: Yes, sir, you could say I have.

THE COURT: How successful were you when you tried?

THE DEFENDANT: Well, I was successful enough for my own satisfaction at any rate.

THE COURT: How did you prevail

in the --

on the issue that you were researching, did you

prevail or did you not prevail?

THE DEFENDANT: I don't care to discuss it,

sir.

THE COURT: I see. In the church law I

would assume that there's language that's used in

church law that's maybe not real familiar to

laymen, is that a fair assessment or is that

unfair?

THE DEFENDANT: I think that would be a

fair statement, sir.

THE COURT: Do you understand that there's

language that's used in the legal service between

the lawyers and courts that are words of art that

-- that if those words are used, that you might

not have any idea what people are talking about?

have you ever considered that?

THE DEFENDANT: Yes, sir, I heard a few

Latin phrases.

THE COURT: I'm not necessarily talking

about Latin phrases. Most lawyers don't -- I'm

not talking Latin phrases. I'm talking about

English, sir.

THE DEFENDANT: Yes, sir.

THE COURT: I'm talking English words that are used every day in the judicial system in criminal cases that you would not have any idea what they mean or what you should do.

THE DEFENDANT: Yes, sir, I realize that there are certain difficulties in one representing himself who hasn't gone through law school, and that's one of them, yes, sir.

THE COURT: And you don't think that would

put you at any tremendous disadvantage?

THE DEFENDANT: In some senses, yes, sir,

but I think -- I don't think it would inhibit me

from obtaining my ultimate end.

THE COURT: How old are you, Mr. Hill?

THE DEFENDANT: 40 years old.

THE COURT: 40. .Are you married or single?

THE DEFENDANT: I'm married.

THE COURT: Do you have any children?

THE DEFENDANT: Yes.

THE COURT: How many children?

THE DEFENDANT: I have three children.

THE COURT: What are their ages?

THE DEFENDANT: I don't care to discuss it,

sir.

THE COURT: Are they male or female?

THE DEFENDANT: I've got two

daughters and

18 a son.

19 THE COURT: Two daughters and a son. They

20 have to be less than 10, don't they?

21 THE DEFENDANT: That's for you to judge,

22sir.

23 THE COURT: Have you considered your

24 decision on how it will impact on your wife and

25 your family as to your self-representation, as to

how much impact or suffering it might bring upon them?

THE DEFENDANT: Yes, sir, I certainly have.

THE COURT: And have you considered it or just thought about it or what?

THE DEFENDANT: I've -- yes, sir, I've given it considerable, considerable thought.

THE COURT: Have you discussed it with your wife?

THE DEFENDANT: Yes, sir, I have.

THE COURT: What about your children, have you discussed it with your children?

THE DEFENDANT: No, sir.

THE COURT: You don't think they should be part of the decision or have an input into such a major decision in your life?

THE DEFENDANT: I don't care to discuss it, sir.

THE COURT: Okay. Have you had any physical problems, health problems in your life? You're relatively young, you're 40 years old.

THE DEFENDANT: I've got excellent health, sir.

THE COURT: Have you had any physical problems in the past where you've been in

hospitals or surgery or anything of that nature?

THE DEFENDANT: No, sir. I've never been -- I can't think of ever having been confined in a hospital, no surgery. I've got a blood sugar problem called hypogylcemia. I can't -- that I control with diet, so it doesn't pose a major problem functioning, never has.

THE COURT: Are you currently having any physical problems? I know you've been in jail approximately two months. Are you currently experiencing any physical problems?

THE DEFENDANT: None at all, sir.

THE COURT: Is your weight about the same now as it was whenever you were arrested?

THE DEFENDANT: Yes, sir.

THE COURT: Kind of maintaining your same

weight?

THE DEFENDANT: About the same, yes, sir.

THE COURT: Anything at the jail that's

causing you problems physically?

THE DEFENDANT: No, sir.

THE COURT: What about in the past, any

mental problems or hospitals or counseling or

anything of that nature?

THE DEFENDANT: D;D I have any history of

mental problems, that type of thing, sir.

THE COURT: Have you ever had to take any type of medication that would be of the type that's normally given in hospitals for like tranquilizers, things of that nature?

THE DEFENDANT: No, sir.

THE COURT: You've never had any type of problems that would require any type of those type of medications?

THE DEFENDANT: That's correct.

THE COURT: Okay. Are you taking any medications now?

THE DEFENDANT: None whatsoever.

THE COURT: While you've been in jail, you're not taking any medications out there at the county jail or no one is giving you any

17 medication?

18 THE DEFENDANT: That's correct.

19 THE COURT: Haven't asked for any?

20 THE DEFENDANT: That's right.

21 THE COURT: How do you feel in relation to

22 when you were arrested, how do you feel today in

23 relation to your mental approach to what's going

24 on?

25 THE DEFENDANT: There's no question it

would take a little adjusting to get used to being

in jail, but I think that I've adjusted well to

it, and I feel as good as I think anyone could

expect to feel.

THE COURT: Would you say today as a result

of being in jail that at least mentally that you

are optimistic or pessimistic or depressed?

THE DEFENDANT: I -- I'm certainly not

depressed, sir, and I do characterize myself as

being -- having a warm, bright, optimistic

outlook, yes, sir.

THE COURT: You're not depressed right now?

THE DEFENDANT: No, not at all, sir.

THE COURT: What about in the past, even

nonprescription drugs, what about over-the-counter

type of drugs that you might have taken? And I'm

not necessarily talking aspirin that everybody --

but any type of medication that you've taken in

the past that would be considered over-the-counter

type of medications that -- that you have had some

type of problem with that you had to persistently

take some type of over-the-counter medication?

THE DEFENDANT: No, sir, I never had any

problems or any addiction or -- I scarcely ever

use any type of over-the-counter medications.

Maybe occasionally something for a cold to reduce a symptom. That's about it.

THE COURT: What is your education?

THE DEFENDANT: I hold a master's in divinity from the Reform Theological Seminary in Jackson, Mlssisslppl.

THE COURT: You have a master's degree?

THE DEFENDANT: Yes.

THE COURT: What is your bachelor's degree in?

THE DEFENDANT: In arts.

THE COURT: What art, or the arts?

THE DEFENDANT: I hold a bachelor of arts from --

THE COURT: Bachelor of arts in what?

THE DEFENDANT: I have a major in Bible, my

17 degree is called a bachelor of arts.

18 THE COURT: Okay. Bachelor of arts as

19opposed to a bachelor of science?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In Bible, and where is that

22 degree from?

23 THE DEFENDANT: Bell Haven College in

24 Jackson, Mississippi.

25 THE COURT: Bell Haven.

THE DEFENDANT: Yes, sir.

THE COURT: In Jackson, Mississippi. And where is the master's degree from?

THE DEFENDANT: Reform Theological Seminary in Jackson, Mississippi.

THE COURT: That's a master's degree in what -- what actually is the degree in?

THE DEFENDANT: It's referred to as divinity. It's -- it's a common course for pastors. It's a fully accredited course that -- that trains you in, you know, Greek and Hebrew skills, theology so that you're prepared for ministry.

THE COURT: What years did you go to the school while you received your bachelor of arts in Jackson, Mississippi? What years were

you there?

THE DEFENDANT: I was there from '73, '74 till '78.

THE COURT: And what type of student were you?

THE DEFENDANT: I was -- I applied myself, was a serious student.

THE COURT: Would you classify yourself as a B student, A student, somewhere in between, C student?

THE DEFENDANT: Probably a C student.

THE COURT: Could a C student, does that qualify you to get in the master's program.

THE DEFENDANT: I was qualified, yes, sir, to enter the Reform Theological.

THE COURT: It's not necessarily based upon grade-point average?

THE DEFENDANT: That's correct.

THE COURT: Other considerations got you in graduate school other than just grade-point average?

THE DEFENDANT: I don't remember what my grade-point average was, sir, never paid much attention to it. But, yeah, I fulfilled the requirements for entry into Reform Theological Seminary. I don't remember what they

were.

THE COURT: How long were you there at the

school where you had a master's degree, what years

were you there obtaining that master's degree?

THE DEFENDANT: I was there approximately

from '78 till 1983.

THE COURT: So you were there five years

to get a master's degree?

THE DEFENDANT: Yes, sir.

THE COURT: Were you going full time or

part time?

THE DEFENDANT: I was studying full time.

THE COURT: Does it take five years to get a master's degree in that?

THE DEFENDANT: Not normally. I stretched it out some.

THE COURT: You didn't work during that period of time?

THE DEFENDANT: None to speak of.

THE COURT: Were you married or single at the time?

THE DEFENDANT: I married after my first year at the seminary.

THE COURT: In your undergraduate -- undergraduate first year?

THE DEFENDANT: No, my first year at the -- at Reform Theological.

THE COURT: In the master's program?

THE DEFENDANT: Yes.

THE COURT: Did your wife work during that five-year period?

THE DEFENDANT: That is correct, sir.

THE COURT: Okay. What type of grades did you make in the master's program?

THE DEFENDANT: They were -- they were -- I

don't know, high -- high C, B average. They were pretty good, average.

THE COURT: Do you have any other post-graduate education?

THE DEFENDANT: No formal training to refer to.

THE COURT: What about informal?

THE DEFENDANT: You know, in seminars and as a matter of fact, organized a few Presbyterians of which I was a part, that kind of thing.

THE COURT: Where did you go to high school?

THE DEFENDANT: Coral Gables Senior High School in Coral Gables, Florida.

THE COURT: What year did you graduate?

THE DEFENDANT: '73.

THE COURT: Did you

immediately start

college or was there

THE DEFENDANT: Yes, sir.

THE COURT: And that was over in Jackson,

Mississippi?

THE DEFENDANT: That's correct.

THE COURT: Did you grow up in Coral

Gables?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know how to type?

THE DEFENDANT: Yes, sir.

THE COURT: How many words a minute can you type?

THE DEFENDANT: I'm a fairly poor typist due to my lack of practice. My wife does a lot of my typing. So I have never obtained very many words per minute. I don't know, maybe 20 words per minute.

THE COURT: That's with errors or without errors?

THE DEFENDANT: That's probably with plenty of errors.

THE COURT: Do you have a typewriter available to you out at the jail?

THE DEFENDANT: I would assume I would,

yes, sir, but --

THE COURT: Have you seen one?

THE DEFENDANT: I haven't seen it, no, sir.

THE COURT: Have you asked about one?

THE DEFENDANT: No, sir.

THE COURT: How do you know it's available?

THE DEFENDANT: Well, I've got confidence that the Court will provide me access to it if necessary when I represent myself.

THE COURT: Do you know if there's a law library out there at the jail?

THE DEFENDANT: Yes, sir.

THE COURT: Have you ever been in it?

THE DEFENDANT: Not as yet, sir.

THE COURT: You've never gone down there and tried to do some legal research?

THE DEFENDANT: No, sir.

THE COURT: Do you think you're capable of using the law library at the Escambia County jail?

THE DEFENDANT: I'm sure I could make use of it, yes, sir.

THE COURT: Well, might make use of it, make effective use of it. You think you can make effective use of it?

THE DEFENDANT: I would think so, yes, sir.

THE COURT: Other than obtaining your ultimate purpose, do you recognize that you will be at a serious disadvantage in representing yourself against a trained, qualified, skilled prosecutor?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. That doesn't bother you?

THE DEFENDANT: No, sir, it does not bother

me.

THE COURT: Let me ask you this. If you were representing yourself and if you realized that you are at a disadvantage, would you expect the trial judge to help you because you're representing yourself?

THE DEFENDANT: No, sir.

THE COURT: Well, a minute ago you told me you were assuming that I was going to give you a typewriter.

THE DEFENDANT: Yes, sir, that's correct.

THE COURT: Well --

THE DEFENDANT: When you say help, yeah.

THE COURT: That's help, isn't it, a typewriter?

THE DEFENDANT: Yes. So I stand corrected.

I assume that you will give me some help, yes, sir.

THE COURT: Okay. Do you assume that if you are representing yourself in the trial, that because you're representing yourself that I'm going to help you or any other trial judge is going to help you?

THE DEFENDANT: Not in the sense of in which you're using the words now, sir, no.

THE COURT: Do you understand that if you do, in fact, represent yourself, that you will be treated and the rules and the law would be applicable the same to you as it would an attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Have you got a problem with that?

THE DEFENDANT: None whatsoever.

THE COURT: To be held by the same standard?

THE DEFENDANT: None.

THE COURT: Do you understand, Mr. Hill, that one of the things that I've got to decide upon the motion that you filed is whether or not you have knowingly and intelligently waived your

17 right to have an attorney represent you? You know

18 that, don't you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That's been explained to you I

21 think by your attorney, is that correct?

22 THE DEFENDANT: That's correct, sir.

23 THE COURT: That's what Faretta is all

24 about. You understand that, don't you?

25 THE DEFENDANT: Yes, sir.

THE COURT: Yesterday when we were in court, I brought up a suggestion that -- that we might have two medical doctors examine you, give you a physical and see how your general physical health is, and also examine you to see how your general mental health is, and to have them report back to the Court after they make the physical and mental examination to make sure there's no physical and mental problem today that might be causing some problem with the decision that you're now making -- that you're now making.

THE DEFENDANT: I recall that, yes, sir.

THE COURT: You indicated to me that you would like to have some time to think about that

and to decide whether or not I really needed

that. I think that really came from Mr. Loveless,

as to whether or not I would need that to decide

this case or this motion.

THE DEFENDANT: As I remember it, the

concept as I remember it was the suggestion was

that we have this hearing, and then at that time

if you determined that there was cause for me to

have a doctor, that you might0 reconsider doing

that at the --

THE COURT: That's fair. I also mentioned

yesterday that I would need to get some type of

commitment from you, that if I appointed two

medical doctors to examine you physically and

mentally for your present -- present physical and

mental health in making this decision, that --

that I would consider doing that if you told me

that you would cooperate with them and that you

would allow them to do their jobs. I indicated to

you that I really don't want to do a useless act.

There's no sense in appointing doctors if you

simply are going to not answer their questions or

allow them to give you a physical.

What are your thoughts as to whether or not

you would cooperate with two doctors to make a

present determination as to your

physical or

16 mental health in making this decision to represent

17 yourself?

18 THE DEFENDANT: I would request that the

19 Court not appoint these doctors for these

20 purposes.

21 THE COURT: I understand you are making the

22 request. The question is this. If I appoint the

23 two doctors to make that evaluation, will you

24 cooperate with them or are you -- or will you not

25 cooperate with them? That's really what it comes

down to. That's my question. Not whether or not you want me to do it or not do it, whether or not you will cooperate with them.

THE DEFENDANT: I would like to discuss that with my attorney.

THE COURT: You want to do it right now?

THE DEFENDANT: Sure.

THE COURT: Sure, step over.

(Discussion among Mr. Loveless, Mr. France and the defendant off the record.)

THE COURT: Mr. Hill, have you had a chance to discuss this with Mr. Loveless, your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: What would you like to do, sir?

THE DEFENDANT: I think it would be a useless act for me to go through this examination.

Therefore, I wouldn't cooperate with them, no, sir.

THE COURT: So you would not cooperate with two doctors, medical doctors appointed to determine your present physical and mental health in making this decision?

THE DEFENDANT: You heard me, sir.

THE COURT: Does the State have any questions at this time that they would like to ask

Mr. Hill?

MR. MURRAY: Yes, Your Honor. May I approach the podium?

THE COURT: Sure. You want Mr. Hill placed under oath or not?

MR. MURRAY: He's not been under oath up to this point.

THE COURT: I can get him to either affirm or swear that the prior answers given to the questions, I can do that if you want me to do that.

MR. MURRAY: I'm not requesting it, Your Honor.

THE COURT: Okay. Fine.

MR. MURRAY: Mr. Hill, I mean, you understand, do you not, that the Court is indicating to you that you're relinquishing some

constitutional guarantees that every citizen has under the Constitution?

THE DEFENDANT: Yes, sir, I'm aware of that.

MR. MURRAY: And there are -- there is only probably one benefit from you doing that, and that is that you would be in control to some extent of the defense of your case?

THE DEFENDANT: I' m sure you know whether that was the only benefit, but I understand that I would be in control of my case, yes, sir.

MR. MURRAY: There's a lot of disadvantages, the Court has gone through kind of a laundry list?

THE DEFENDANT: Yes, sir.

MR. MURRAY: One of those disadvantages might be that you would want to ask a question or to present a defense. Do you understand that if you do not know how to lay a foundation, that is to say, to ask the right series of questions, if I stand up and object and the Court sustains it, that you may be essentially thwarted in your efforts to try to move forward in the particular area? Do you understand that?

THE DEFENDANT: Yes.

MR. MURRAY: Do you understand -- at least I understand, I want to be sure that you do, the trial judge has indicated very clearly to you that he will treat you the same as he does any other lawyer that appears in front of him?

THE DEFENDANT: That's been made clear to me. I understand that.

MR. MURRAY: You recognize that is a

substantial disadvantage?

THE DEFENDANT: Yes, I understand that.

MR. MURRAY: Would you also accept that all of the legal scholars and writers, at least within the field of jurisprudence, uniformally agree that self-representation is -- is nearly an act of futility on the part of a defendant?

THE DEFENDANT: I wasn't aware of that -- the uniquity of the decision or the opinion on that but --

MR. MURRAY: I don't want to indicate to you that probably everybody, but the vast weight -- the vast majority of the scholars in that area indicate clearly that it s almost an act of self-destruction and in your case may be an act

16 of self-destruction.

17 THE DEFENDANT: I certainly understand what

18 you said.

19 MR. MURRAY: And having all those things in

20 mind, do you knowingly and intelligently and

21 voluntarily indicate to Judge Bell that you still

22 want to represent yourself?

23 THE DEFENDANT: Most definitely.

24 MR. MURRAY: And you've given careful

25 thought to the questions that have been posed to

you here this afternoon?

THE DEFENDANT: Yes, I certainly have.

MR. MURRAY: Have you been threatened or coerced or influenced by somebody to engage -- other than yourself to engage in this course of behavior?

THE DEFENDANT: No, I have not.

MR. MURRAY: Is this something that you are doing because you want to do it?

THE DEFENDANT: Most definitely.

MR. MURRAY: I think that I understood you to say that you're not displeased with the services of the public defender?

THE DEFENDANT: That's definitely the case.

MR. MURRAY: That's a fair characterization?

THE DEFENDANT: That's true.

MR. MURRAY: And if you had a lawyer, if you decided that you wanted to have a lawyer, you would be comfortable with Mr. Loveless and Mr. France?

THE DEFENDANT: With the reservations that they have expressed that --

MR. MURRAY: I'm not asking you to divulge communications, but -- do you feel there is some

other lawyer that could better represent you other than Mr. France and Mr. Loveless?

THE DEFENDANT: It's entirely possible.

MR. MURRAY: But I mean, you don't have anybody in mind?

THE DEFENDANT: No, sir.

MR. MURRAY: Are you familiar with the saying that a person who represents hisself in court has a fool for a client?

THE DEFENDANT: I wonder who originated that saying?

MR. MURRAY: Probably lawyers.

THE DEFENDANT: Probably.

MR. MURRAY: But do you understand the thought, the thrust of that?

THE DEFENDANT: As conceived by a lawyer, yes.

MR. MURRAY: Okay. Are you under the influence of any drugs or alcohol at the present time as you're here before the Court?

THE DEFENDANT: No.

MR. MURRAY: Do you need additional time in which to reflect on your decision?

THE DEFENDANT: No, I don't.

MR. MURRAY: Is there anything that Judge

Bell has gone over with you or perhaps your attorneys that you feel you need additional time to reflect on or think about?

THE DEFENDANT: No.

MR. MURRAY: Do you need additional time to talk to Mr. Loveless and Mr. France?

THE DEFENDANT: No, sir.

MR. MURRAY: And having all these disadvantages pointed out to you, it's your decision still that you want to proceed forward in representing yourself?

THE DEFENDANT: Most definitely.

MR. MURRAY: I don't have any other questions.

THE COURT: I've got one other question, Mr. Hill, that I want to ask you. This case is presently set for trial, I think January the 30th,

1995. And we have scheduled two weeks for this

trial for the picking of the jury and the trial of

the case. If you were representing yourself, do

you have any problems whatsoever with those time

frames in being ready for trial on those dates?

THE DEFENDANT: Yes, sir. I mean, if you

grant me the responsibility of representing

myself, I would make a motion for a speedy trial.

THE COURT: So in other words, you want to move the trial up rather than -- rather than January 30th?

THE DEFENDANT: That's correct, sir.

THE COURT: Let me ask you this. If a motion for speedy trial is not filed, or if a motion for speedy trial should be denied, you would certainly be ready for trial no later than January 30th, which is the present trial date?

THE DEFENDANT: That's correct.

THE COURT: Do you understand that we do operate within time frames in the court system?

THE DEFENDANT: Yes.

THE COURT: Okay. And you are willing to abide by those?

THE DEFENDANT: Yes.

THE COURT: Do you understand the conditions precedent to filing a motion for speedy trial?

THE DEFENDANT: I probably don't know much about it, no, sir.

THE COURT: Do you understand what you are really saying when you file a motion for speedy trial?

THE DEFENDANT: I understand the basic

concept, yes, sir.

THE COURT: Tell me what you understand about the basic concept of a motion for speedy trial.

THE DEFENDANT: I don't care to discuss it right now, sir.

THE COURT: Well, is it that you don't care to discuss it or is it you don't have the knowledge of what the prerequisites are in relation to a motion for speedy trial?

THE DEFENDANT: Yes, sir, I don't care to discuss it.

THE COURT: I see. So you're telling me that you do know?

THE DEFENDANT: No -- I said I don't care to discuss it.

THE COURT: You don't care -- you don't care to tell me whether or not you know it and just don't want to tell me, or whether or not you don't know it and just don't want to tell me?

THE DEFENDANT: You could say that.

THE COURT: Okay. You understand that on all motions filed and all objections made pretrial - and trial, that as Mr. Murray said, that sometimes there are objections made because a motion or a

question is not well founded?

THE DEFENDANT: I understand that to be the case, yes, sir.

THE COURT: And you understand that the legal system, that there are certain things that have to be done and that's why lawyers go to law school and that's why lawyers work and gain experience?

THE DEFENDANT: Yes, sir.

MR. MURRAY: Could I ask more questions, Your Honor? Mr. Hill, if you will indulge me. In the event that I stand up and make an objection and it s sustained by the Court, the Court is going to make a ruling, the Court is going to make a lot of rulings based upon the law. Are you willing to abide by the rulings that

the Judge

17 makes insofar as conduct of the trial is

18 concerned?

19 THE DEFENDANT: Absolutely.

20 MR. MURRAY: Now, are you willing to abide

21 by those rulings even though in your mind they may

22 conflict with your belief in glorifying God, are

23 you going to abide by the rulings at least insofar

24 as conduct of the trial is concerned?

25 THE DEFEUDANT: Would you restate your

question, please?

MR. MURRAY: The Judge is in sole charge of the conduct of the trial, and it's his duty to make rulings based upon law and be sure the trial moves smoothly.

THE DEFENDANT: Uh-huh.

MR. MURRAY: In the event that you wanted to advance a proposition and there was an objection to that and the Judge sustained it, based upon his legal ruling, do you understand that you would have to abide by that ruling even though you may feel that it conflicts with your views of glorifying God?

THE DEFENDANT: Yeah, I understand that.

MR. MURRAY: Are you willing to do that?

THE DEFENDANT: Yes, I am

willing to do

17 that.

18 THE COURT: Mr. Hill, is there anything

19 else concerning this motion for

20 self-representation that you think is relevant

21 that you want to tell me that we have not covered?

22 THE DEFENDANT: Nothing comes to mind, sir.

23 THE COURT: I would ask the Public

24 Defender's Office, I indicated yesterday at our

25 kind of little status conference hearing that

certainly I would allow y'all to participate and ask questions or not ask questions, anything you wanted to do. If you want to ask Mr. Hill any questions or at this time you have a chance to do it, if you don't want to do it, then that's fine, too.

MR. LOVELESS: I have no questions, Your Honor. I do have a comment to the Court as far as my -- as far as my representation of Mr. Hill and my duties as an officer of the court.

THE COURT: Well, right now let's take care of first things first.

MR. LOVELESS: No questions.

THE COURT: No questions of Mr. Hill.

Thank you very much, Mr. Hill. You just return to your seat, sir.

Mr. Loveless, now is an opportunity for you to speak to his motion -- you are still representing him -- speak to his motion as to whether or not -- his motion to represent himself on these capital cases should be granted, whether or not you think Faretta has been -- has been covered, whether or not you think his responses reach the level that he can -- that he can, in fact, represent himself on these charges.

MR. LOVELESS: Your Honor, I'm not sure that I should comment at this point on whether or not I think of the legal sufficiency of that; however, I think I should comment to the Court as I indicated on my representation of him in my duties as an officer of the court, and I think the Court is aware that one of those things is to make--- under the rules of procedure to make the Court aware if I feel at any time that Mr. Hill is not competent to proceed. I'm very much aware of that duty.

And I would indicate to the Court that in all my dealings with Mr. Hill, there has never been any indication of any kind that he is not competent to proceed. As far as I'm concerned,

Your Honor, he is completely competent to proceed and I believe him to be competent to make the motion. Even though I may disagree with the motion that he has made, as he and I have discussed at length, his -- I think his competency to make the motion, his ability to express the desire to represent himself, is very clear to me, Your Honor. And if I thought otherwise, I believe that I would have acted differently in filing the motion for -- I felt there was a question of

competency, I would have made that known to the

Court in the motion in this particular-situation, Your Honor, obviously was not appropriate.

I don't know how far I can go as far as

saying my -- but based upon what I know of Mr.

Hill, based upon what I understand of the

proceedings here today, even though I disagree

with his decision, I feel that under the current

law that that motion should be granted.

THE COURT: Mr. Murray.

MR. MURRAY: Your Honor, the question was

answered in Faretta as to whether or not the

government can force counsel upon a defendant who

does not wish to be represented by counsel. And

of course Faretta stands for the proposition that

every defendant can proceed forward in

representing himself if he chooses to do so.

Interestingly enough, within the Faretta decision

the Court noted the majority opinion that

technical legal knowledge is not the threshold

question. It doesn't really matter whether or not

he has an understanding of the system, doesn't

matter whether or not he's ever been in a law

library or whether or not he knows how to phrase a

question or make an objection. What is required

by Faretta is whether or not he has a clear understanding of the advantages and disadvantages and he makes his decision, and I quote the Court, and they cited another case, does he know what he's doing and is his choice made with his eyes open?

I think that the inquiry has been extensive of Mr. Hill. Time and time again he's been asked do you understand the gravity of the decision? He's indicated affirmatively that he does. His affect is appropriate in court. He appears to be able to reason and logically proceed forward.

Despite the fact that I joined Mr. Loveless in disagreeing with his decision, I believe it s constitutionally protected. I don't

think the

16 Court has any choice, and I see no reason why his

17 motion to proceed pro se shouldn t be granted.

18 Doesn't mean I agree with it, just means that

19 constitutionally I don't think the Court has any

20 choice.

21 This, however, is where Mr. Loveless and I

22 are going to part. I do think that he should have

23 standby counsel. I believe there's going to be

24 times in which he's going to want to ask a

25 question, and standby counsel can provide that

type of legal knowledge to him. And I would think

that would be imperative for no other reason to

ensure due process and to provide continuing

access within the Sixth Amendment sense to the

defendant that he have standby counsel.

THE COURT: Any rebuttal, Mr. Loveless?

MR. LOVELESS: Your Honor, the only comment

is on the issue of standby counsel, and if the

Court wishes me to make that at this time.

THE COURT: Well, if it's -- if it's

something new other than what you've already said,

I'll happy to hear it.

MR. LOVELESS: I would like for the record

to be --

THE COURT: But if it's just a rerun of

what you previously said --

MR. LOVELESS: I would like the record to be clear, Your Honor, that -- that I do not think that the taxpayers should be required to pay for standby counsel. I concur with the Court there, that there is no reason why they should be required to pay that. And I believe that to be part of Mr. Hill's decision knowingly made.

THE COURT: Well, one of the things that's going to have to be determined other than just the

questions and answers that have come from this

hearing is that we're going to have to make a

determination as to whether or not Mr. Hill can

articulate. We're going to have to make a

determination that Mr. Hill is competent to

proceed or seems to be based upon what Mr.

Loveless says he has received no indication that

he's not competent.

MR. LOVELESS: That's correct, Your Honor.

THE COURT: We are going to have to make a

determination concerning his intelligence. We are

going to have to make a determination as to his

education, his demeanor in the courtroom and his

ability to kind of express himself. Those are all

factors that are going to have to be

taken into

consideration concerning Mr. Hill.

What I'm going to do is take Mr. Hill's

motion under advisement. And what I'll do is --

as soon as I can is I will prepare an order on his

Faretta motion.

Let me say this as we end this hearing,

that the Florida Bar has just now come to

recognize that the lack of civility is the most

serious problem that we have in the practice of

law today. All the attorneys involved in this

case are qualified, are skilled, are ethical, and all the attorneys in this case have handled everything thus far with civility. And it's appreciated. I wish all lawyers acted with civility toward each other, toward the Court, toward the jury and toward the witnesses. If they did, the legal system would benefit, the judicial system would benefit, and the public would benefit greatly. I appreciate civility. I appreciate it.

I appreciate Mr. Hall -- Mr. Hill's conduct in court today. There are many cases that are tried where a lack of civility is overwhelming. This case so far has been tried at a level of civility that should be an example for every

member of the Bar. I appreciate it.
We'll be in recess. I'll make that
decision just as soon as I can.

(Proceedings concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ESCAMBIA

I, SANDRA G. KNIGHT, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 60, inclusive, is a true and correct transcription of the proceedings held in the case of STATE OF FLORIDA vs. PAUL JENNINGS HILL, Case No. 94-3510, on the 27th day of September 1994, before the Honorable Frank L. Bell, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 20th day of December 1994.

SANDRA G. KNIGHT, RPR
Official Circuit Court Reporter

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing certificate was

acknowledged before
me this 20th day ofDecember 1994,
by SANDRA G.KNIGHT, who is personally
known to me.

/S/ DEBORAH R. TROLLINGER,
Notary Public, State of Florida

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

vs. CASE NO. 94-3510

PAUL JENNINGS HILL,

Defendant.

_____/

Proceedings held in the above styled cause before the Honorable Frank L. Bell, Circuit Judge on the 13th day of October 1994, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola Florida.

APPEARANCES:

FOR THE STATE: JAMES R. MURRAY, ESQUIRE
Assistant State

Attorney

Pensacola, Florida
32501

FOR THE DEFENDANT: MR. PAUL J. HILL
Pro Se

EARL LOVELESS, ESQUIRE
Assistant Public Defender
190 Governmental Center
Pensacola, Florida
32501

EMILY C. UNDERWOOD, RPR
CIRCUIT COURT REPORTER

PROCEEDINGS

THE COURT: Good morning. You say the other trial--they will take care of that? Let me see the file on Mr. Hill.

Mr. Murray and Mr. Loveless and Mr. Hill, would y'all come up, please. Right back in there is fine. This is the case of State of Florida vs. Paul Jennings Hill. And really what I called this for this morning was to kind of have a --I guess you could best call it a supplemental Faretta hearing.

I know that since we had our last time in court in which we went over some questions and answers from Mr. Hill concerning his desire to

represent himself, that he has had since then a different experience, that he has been up in federal court up there. And as I understand it, you can correct me, Mr. Hill, if I -- factually it's may understanding that Mr. Hill represented himself up in federal court on a trial that lasted a couple of days, several days anyway. And I really need to know at this point if you still really want to represent yourself after you have experienced representing yourself in the federal court?

THE DEFENDANT: Yes, sir.

THE COURT: You do? I want you to understand that when--the case that is in the state court in which you will charged with, it's my understanding that Mr. Murray has already expressed at a prior hearing that the State does intend to seek the death penalty, that the State proceedings are different, substantially different than the federal proceedings. Do you understand that?

THE DEFENDANT: Yes, sir. They are different in a number of ways, I'm certain.

THE COURT: You understand that in this particular case that will be tried in the state

15 court,m that in addition to selecting a jury or

16 striking a jury, that the attorneys primarily do

17 most of the voir dire in state court, where in

18 federal court it's primarily the judge up there

19 that handles the--most of the voir dire and the

20 attorneys can submit some questions. THe System

21 in the state court is entirely different. Do you

22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Do you understand that

25 in this particular case because the death

penalty--the State is seeking the death penalty,

that in addition to just selecting a fair and

impartial jury, that it goes further than that and

that you have to then ask these jurors their

opinions and views upon the death penalty and

whether or not they qualify as a juror in a death

penalty case, which is completely different than

other type of cases in which the death penalty is

not being sought by the State? In other words,

they call it death qualifying jury, which is--

which is further steps--more specific steps than

picking a regular jury in state court?

THE DEFENDANT: I see.

THE COURT: Do you understand that?

THE DEFENDANT: Yes, sir, I understand that.

THE COURT: How do you understand that?

THE DEFENDANT: Well, I understand at least as well as you just described it.

THE COURT: In other word, you understand the concept?

THE DEFENDANT: Yes, sir.

THE COURT: Do you think you understand the details enough, Mr. Hill, that you can--you can put it in practice, that you think you can do it?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything about any of the answers that you gave me last time that you were in court and we had this dialogue, any of the answers that your gave me that--that you would change if the same questions were asked today?

THE DEFENDANT: No, sir. I'm sure my answers would be substantially the same.

THE COURT: Are there any questions that you have about state court proceedings, ho they are different from the federal proceeding, how a death qualifying jury is different from a regular jury that--you know, that you feel that you have

14 questions maybe that you ask Mr. Loveless, your

15 standby counsel? Is there any questions that come

15 to your mind or do you feel that because you have

17 mr. Loveless and Mr. France, that when those

18 matters come up, that they will be able to answer

19 them for you and to give you some guidance on it?

20 THE DEFENDANT: No question that that is

21 what the purpose of standby counsel would be, yes,

22 sir.

23 THE COURT: You feel like you would use

24 your standby counsel in those areas that you fell

25 like you are lacking in?

THE DEFENDANT: Indubitably.

THE COURT: Mr. Murray, do you have nay

questions that--

MR. MURRAY: Judge if the Court could

inquire in just two areas just for the protection

of the record. Whether or not he's under the

influence of any medication or anything right no

and the secondly--

THE COURT: That was one of the questions I

asked him originally, and he said his answers

would be the same. But I will specifically ask

him that.

MR. MURRAY: Secondly, if you will inquire

of Mr. Loveless whether or not be has any reason

15 to believe that the defendant is not competent to

16 proceed at this point and exercise his own

17 independent judgment.

18 THE COURT: Well, I will ask those specific

19 questions. Are you under any type of

20 over-the-counter medication or prescription

21 medication now?

22 THE DEFENDANT: None, your Honor.

23 THE COURT: Mr. Loveless, last time we were

24 in court and we had the original Faretta hearing,

25 you indicated from all observations that you had

1 of Mr. Hill and all conversations that you had

2 with him, that you had no indications that you

3 felt that he was incompetent to proceed. Is that

4 still your opinions and observations?

5 MR. LOVELESS: it is, you Honor.

6 THE COURT: Any other comments?

7 MR MURRAY: No, Your Honor.

8 THE COURT: What about Mr. Loveless, any

9 comments as far as you are concerned?

10 MR. LOVELESS: Your Honor, the only thing

11 that I would like to take this opportunity to ask

12 the Court to reconsider it's ruling on the--our

13 request to be relieved as counsel completely in

14 the case. Again, remind the Court of the argument

15 we made before and particularly the

State decision and indicate to the COurt again

that we're not stating that the COurt does not

have the discretionary power i it wishes to

appoint standby counsel.. Our position is that

statutorily that we are not permitted to perform

that function.

THE COURT: I respect your request. WHen I

appointed the Public Defender's Office, I didn't do it lightly.

MR. LOVELESS: Yes, sir, I understand that.

THE COURT: I know that Mr. Hill will receive excellent counsel and--

MR. LOVELESS: I want the Court to understand I have told Mr. Hill and I will tell Mr. Murray now that based upon the Court's ruling, we intend to request either a writ of prohibition or writ of certiorari on that particular issue. That issue I do not believe will cause any delay in the case. It has to go--it has to do only with our representation, and it's a matter that we feel needs to be cleared in this matter of law in the State of Florida.

THE COURT: Mr. Loveless, you know that, you know, if you feel you need to file motions,

hey, that's what they are there for.

MR. LOVELESS: I just want the Court to

be aware of what I'm doing.

THE COURT: I have no problem with that, no

problem whatsoever.

THE DEFENDANT: if it's permitted, I would

like to take this opportunity to offer permission

for a speedy trial, sir.

THE COURT: What you need to do, Mr. Hill

--do you have it prepared?

Yes, sir.

THE COURT: Written?

THE DEFENDANT: Yes, sir.

THE COURT: Do you want to file it?

THE DEFENDANT: Yes, Sir.

THE COURT: Is that what you want to do?

And we need the record to reflect that Mr. Hill has served a copy of the motion on the State.

Since that has now been filed, we need-- I will hand that to the clerk, and we'll not it as having been filed today at 9:13 by that clock that we have in the courtroom. What does the State intend to do?

MR. MURRAY: State is ready to go, Your Honor. You know, if we can do this in--we would

15 like to do it in November, and I realize that that

16 it's an understatement to say that your calendar

17 is crowded.

18 THE COURT: Well--

19 MR. MURRAY: But if we could-- it is my

20 impression from observing Mr. Hill and now in

21 light of what--the demand that he has filed, he

22 wishes to move quickly. And so we would be moving

23 to try and get a trial date set in the first week

24 or two in November, if we can do that.

25 THE COURT: Well, what I can do is check

with Miriam. She knows my schedule. I don't have

it down here with me this morning. I'm getting

ready to start another trial. I will try too--

realistically how much time do you think we're

talking about here? I know in the end of January

we had actually had set about two week--

MR. LOVELESS: Yes sir.

THE COURT:--for the trial.

Realistically do you think we're talking two weeks

here?

MR. MURRAY: No, sir. I'm due to meet with

Mr. Hill and any standby counsel following this

meeting. SOme of those factors will be discussed,

but I think I'm pretty accurate in telling the

15 Court it's probably going to be accomplished in

16 less than a week.

17 THE COURT: Mr. Hill, do you want to say

18 anything on the question of when this case is

19 going to be tried? The State is saying they would

20 like to try it the first part of November, which

21 today is what, the 13th--

22 MR. MURRAY: Yes, sir.

23 THE COURT: --of October? WE're talking

24 probably in the three-week range, somewhere in

25 there. I don't know what my schedule is at this

point in time. But what is your comments on that?

THE DEFENDANT: That would certainly be

agreeable to me, sir.

THE COURT: You are just going to meet with

them for what purpose?

MR. MURRAY: Well, he's acting as his

lawyer, so I have to deal with him as a lawyer.

THE COURT: Directly.

MR MURRAY: When I contacted his standby

couple in federal court, he indicated through

standby counsel that he was willing to meet with

me, but that he wanted his standby counsel

present, Mr. Loveless, and so we have been

coordinating that with Mr. Loveless.

THE COURT: That ia fine. Why don't we do this. Today sometime when I get a break form the trial that we're about to start, I will check with Miriam and we'll try and ind a day, a week. we will block a week off. Even though you think it might take less than a week, we'll block a week off. And what I can do at that point in time is give you the date, give Mr. Loveless the date, and Mr. Loveless can then pass it on to Mr. Hill. And you can either say we will agree with that date or we disagree with that date. If you disagree with

it for some reason, we'll take it up. If you

agree with it, there is not a problem.

MR. MURRAY: My request for the November

time period is to try to resolve this case before

the holidays.

THE COURT: Right.

MR. MURRAY: Because as the Court is well

aware, you get to the end of November on into

January, it is just--it's a major problems.

THE COURT: I have experienced that.

Anything else we need to do this morning? Mr.

Hill?

THE DEFENDANT: No, sir.

THE COURT: Well, I will try and take care

of that today, and do maybe a two-way

call with

16 Mr. Murray and Mr. Loveless, and then he can pass

17 that information to you, Mr. Hill, and you can say

18 yeah or nay on it.

19 THE DEFENDANT: That will be fine, sir.

20 MR. MURRAY: Thank you Judge.

21 (Proceedings concluded.)

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ESCAMBIA

I, EMILY C. UNDERWOOD, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 13, inclusive, is a true and correct transcript of the proceeding held in the case of STATE OF FLORIDA vs. PAUL JENNINGS HILL, Case No. 94-3510, on the 13th day of October 1994, before the Honorable Frank L. Bell, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this 13th day of October 194

/s/ Emily C. Underwood
EMILY C. UNDERWOOD, RPR

Official Circuit Court Reporter

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing certificate was acknowledge before me this 13th day of October 1994 by EMILY C. UNDERWOOD, who is personally known to me.

/s/ Brenda F. Sansom
Notary Public, State of Florida
[Notary Stamp]

PROCEEDINGS

THE COURT: Is the State ready to proceed?

MR. MURRAY: Yes, Your Honor.

THE COURT: Mr. Hill, are you ready to proceed?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. What motions do we have pending that we need to take up this morning?

MR. MURRAY: Judge --

THE DEFENDANT: We have some preliminary motions on matters that can be dealt with before we deal with the State's motion in limine. I'd like to ask the Court to allow an out-of-state attorney, Mr. Vince Heuser, to speak to this incident motion against the State's motion in limine. And if you grant that, I'd also like for him to be appointed standby counsel for me during my trial.

THE COURT: Is that it?

THE DEFENDANT: Yes, sir.

THE COURT: What's the State want to say?

MR. MURRAY: Judge, we re strongly opposed, Your Honor, for a couple of reasons:

One, he's
25 got standby counsel. The first that I
ever --

that I've become aware that there may be another lawyer out on the periphery was when this regurgitation of a Law Review article surfaced when submitted to my office signed by Mr. Hill. That doesn't ascribe any bad faith to Mr. Hill. It is simply a regurgitation of the Law Review article. My understanding is the attorney is not admitted in the State of Florida, and there's just a number of other problems that raises. The State's opposed.

THE COURT: Okay. Anything else? Anything else, Mr. Hill, as far as your request that a non-Florida lawyer be allowed to represent you when you are representing yourself pro se?

THE DEFENDANT: Yes, sir. Mr. Heuser is -- has got his credentials with him. I m sure if you'd be willing to consider his credentials, I'm sure you d find them in order.

THE COURT: Is he a non-Florida lawyer?

THE DEFENDANT: That's correct, sir.

THE COURT: Anything else as to

whether or not Mr. Heuser will be allowed to participate in this since you're representing yourself pro se?

THE DEFENDANT: No, sir. But I wish you would consider him being -- allowing him to speak

for me so that this argument can be made. I'm sure the Court s interested in hearing as much argumentation from the Defense as possible.

THE COURT: I am interested in hearing as much argument from the Defense as possible that's from the defense that s being represented by the Defense. Anything else?

THE DEFENDANT: No, sir.

THE COURT: We ll take and deny the request. What do we have pending this morning?

MR. MURRAY: What is pending that I'm aware of, Your Honor, is the State of Florida's motion in limine No. 1 and then some discussion of some administrative matters concerning the conduct of the trial and jury selection, some matters that I want to bring before the Court. I'm not sure if you want to do it in open court or in chambers, but we have some information to provide to the Court.

THE COURT: Well, let s go ahead and take

the motion in limine as it relates to -- I think it's been filed last week or something. It's the State's motion, and I think Mr. Hill has responded to that. Since it is the State s motion, if you want to go ahead and proceed.

MR. MURRAY: Judge, before we begin, can we just go back over the Faretta requirement once again?

THE COURT: Yeah. Right. Yeah. Thank you. I apprecfate that, Mr. Murray. Mr. Hill, under the Florida Rules of Criminal Procedure, it is necessary that we make a determination in every instance that it's still your desire to represent yourself pro se in this matter. Is it still your desire to represent yourself in this, that is, the State of Florida versus Paul Hill?

THE DEFENDANT: Yes, sir, it most certainly is.

THE COURT: Okay.

MR. MURRAY: Thank you, Your Honor. Judge, on the bench in front of you filed this morning is a memorandum of law that the State has prepared for the Court. Here are the cases which are contained within the memorandum of law.

Judge, the State was speculating early on that in essence or in effect what the defendant

was going to attempt to do was to insert into this murder trial his views concerning the issue of abortion, and so because of that concern, and that concern, of course, was essentially confirmed when

the memorandum of law was submitted and filed with the Court at the end of last week, we filed our motion in limine asking the Court to do two things: One, go ahead and rule on whether the defense of necessity or justification had any relevancy whatsoever to these proceedings involving the first-degree murder of two citizens, one count of attempted first-degree murder of a third citizen, and a final count of shooting into an occupied vehicle, all in violation of Florida statutes.

Now, as the Court is well aware of, the defense of necessity and justification is an affirmative defense. It s a defense that the defendant is going to have to come forward with evidence on his own, and there are four requirements, and those requirements are laid out within the memorandum of law. And if the Court will indulge me, I d like to go over the four

elements of that.

The first element is that he was faced with a choice of evils and chose the lesser evil.

Second, that he acted to prevent imminent harm.

Third, that he reasonably anticipated a causal relationship between his conduct and the harm to

be avoided. And, fourth, that he had no legal alternatives. Under the facts of this case, he fails on all four requirements.

And conlained within the memorandum of law in the stack of cases I gave you is clear indication that every federal and state court that has considered the issue of this defense being raised in relationship to a crime which evolved out of a clinic providing elective abortion services has rejected the defense as not being applicable, and there's a number of reasons for that. The primary reason is, is in element No. 1 he was faced with the choice of evils. Well, under no reading of the law can a

constitutional

15 right or a statutory right be considered to be an

16 evil.

17 That he protected imminent harm. There's

18 going to be -- there s no proof. He's not come

19 forward with any proof to indicate that any of his

20 actions would have in any way voided the decisions

21 of the ladies who appeared at the clinic on the

22 day of the murders.

23 That he reasonably anticipated a causal

24 relationship between h s conduct and a harm to be

25 avoided fails for the same -- for the same

reasons.

And that he had no legal alternative flies in the face of reason because, in fact, he had been exercising his right to demonstrate and convey his views not only to people coming and going to the clinic but views to the public at large, and he had -- nobody was interfering with that. He could have continued on.

The interesting thing about this case is, and the defense that the defendant is attempting to assert here is, that what he s inviting the Court to do is to make a ruling that's going to invite anarchy. He s asking to be able to introduce evidence that would essentially place him above the law. That is to say, I don't agree with the law; therefore, I have a right to go in and break the law and, in this case, commit murder because I disagree with the law. He wants to present evidence which is going to insert an opposition of the law that the Court

is going to
give the jury in the standard jury instructions.
He's going to attempt to insert evidence of
bias and prejudice. He's going to attempt to
convince the jury, if he's allowed to, to not
follow the law. And there is no statutory or case

law basis for the mounting of this type of defense in a case or the facts of the case that is present in this cause of action. More importantly, the model penal code clearly indicates, and I've cited it in the memorandum, that the -- and that's Section 3.02(1)(c). It clearly states that the necessity justlfication defense cannot stand where a legislative purpose sanctioning the activity complained of by the defendant has been passed into law.

In effect, when the Florida Legislature passed Chapter 390, which provides for elective abortions and governs how those elective abortions are to be conducted, they abrogated the defense of necessity and justificatiGn when it's applied to facts or at least a crime evolving out of a clinic or in a clinic setting that provides the very type of statutorily sanctioned activity that's contemplated in Chapter 390.

So the defense doesn't even apply under

these set of circumstances. It's been abrogated by the legislature. But even assuming that it did, it cannot apply where -- where the first element requires a choice of evils, where essentially what we're talking about is

constitutionally protected and also ratified by statute, statutorily protected, and then further ratified by the Florida State Constitution, Article 1, Section 23, right of privacy, and the Florida Supreme Court, in re: T. W., has clearly indicated that the State cannot interfere in that area except as contained within Chapter 390. In fact, it actually struck down part of Chapter 390 where they found it interfered with Article 1, Section 23.

So under the la and the constitutions of both the State of Florida and the United States, the State s motion in limine should be granted. Additionally, we're requesting that any evidence or testimony concerning the defendant's views, his positions, his beliefs, h s thoughts on the area of abortion should be proffered to the Court prior to presentation before the jury so that both sides can have a fair and equal opportunity to argue as to the relevancy and materiality of

such
21 evidence. Thank you.
22 THE COURT: Mr. Hill, do you want to
23 respond, sir, in relation to the State's motion in
24 limine?
25 THE DEFENDANT: No, sir. Since you've

dissallowed the attorney to speak for me, I'll just let my brief speak for itself.

THE COURT: Okay. ~hat else needs to be taken up? You indicated some administrative matters concerning the trial that's now set to start next Monday, the 31st.

MR. MURRAY: That's correct, Your Honor. There was the part about whether or not we were going to utilize jury questionnaires. And although I'm not recommending everything that's contained within the jury questionnaire in a similar case to this one, I do have a copy of that questionnaire.

THE COURT: Sir, I don't have the intentions whatsoever to use the jury questionnaire. This case will be handled just like every other case that I handle.

MR. MURRAY: The State's ready to proceed, Your Honor.

THE COURT: So that s the administrative matter?

MR. MURKAY: That s the only thing that comes immediately to mind.

THE COURT: Okay .

MR. MURRAY: Unless the Court is

anticipating --- wants to give both sides some instructions on how you want to proceed other than what you normally do when you try a criminal case.

THE COURT: That's how I m going to proceed, --

MR. MURRAY: Okay.

THE COURT: -- how I normally do it.

MR. MURRAY: I understand you, Judge, loud and clear.

THE COURT: That's how I'm going to do it. Any other matters, Mr. Hill, as far as you're concerned that we need to take up administrative to the case as set to go to trial, start picking the jury, next Monday?

THE DEFENDANT: No, sir.

THE COURT: Okay. As it relates to the -- I did have the benefit of receiving the memorandums filed by both the State and the Defense last week on the issue of the State's motion in limine, and based upon the memorandums, based upon the case authority, based upon the arguments I m going to take and grant

order basically the motion in limine as granted, and also, I don t want put in this order what you additionally commented concerning what Mr. Hill's beliefs, thoughts, and whatever are because that's something that we usually do not cover pretrial. There's no question that during the course of the trial, that if those matters come up and it's not relevant to what we re doing, then of course it's not going to be part of the trial. It's simply not going to be part of the trial. What's going to be -- what this case is going to be about is relevant evidence.

MR. MURRAY: What I'm concerned about, Judge, is opening statements.

THE COURT: Oh, I understand.

MR. MURRAY: Right. And I just don't want to be in the position of standing up every time Mr. Hill opens his mouth and objecting and asking for a proffer.

THE COURT: Yeah.

MR. MURRAY: And I think --

THE COURT: Well, the difficulty in any

the State's
23 motion in limine as to the relevancy
of those
24 matters. I would appreciate the State
preparing
25 me an order, sending it up and
putting in that

order basically the motion in limine as granted, and also, I don t want put in this order what you additionally commented concerning what Mr. Hill's beliefs, thoughts, and whatever are because that's something that we usually do not cover pretrial. There's no question that during the course of the trial, that if those matters come up and it's not relevant to what we re doing, then of course it's not going to be part of the trial. It's simply not going to be part of the trial. What's going to be -- what this case is going to be about is relevant evidence.

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THE COURT: Yeah.

MR. MURRAY: And I think --

THE COURT: Well, the difficulty in any

case, whether or not a person is represented by an attorney or whether or not they're pro se, is if they make statements in opening statements that

are not relevant to the issues that are being tried, then of course the other side is obligated to make that objection. I'll make that ruling. Now, Mr. Hill told us when we had the Faretta hearing that he would abide by the Court's rulings at trial. I take Mr. Hill at his word that he'll do that. And if you make an objection to something that he s offering or saying and I sustain the objection, I expect Mr. Hill to respect that decision and to proceed to another topic.

By the same token, if Mr. Hill makes an objection to something the State might say and I sustain his objection, then I expect the State to respect tnat decision and move to a new topic. It cuts both ways. And I know the State is being represented in this by an attorney and that's standard operating p-ocedure in all trials and I know what s going to happen. Mr. Hill indicated in the Faretta hearing that he

understands that
he's being held to the same standard as all
trials. And if rulings are made, objections are
made, rulings are made from the bench, then, you
know, I don t want to necessarily get into an
argument. I don t think that s the way to try a

case.
I'm going to make rulings, and it will be on the record, you know, what the objection was, what the ruling was. I'll be happy to hear what he might have to say in relation to a particular matter. It might be done outside the presence of the jury. You know, I mean, I just -- I don't know. We ll handle those matters when they come up. But once that ruling is made, then I expect Mr. Hill to abide by the ruling and to move on to a topic that is relevant. It s that simple. That's the way I handle all cases, and this case will be handled just like all cases.
MR. MURRAY: I understand, Your Honor.
THE COURT: There s no problem as far as you're concerned, is there, Mr. Hill?
THE DEFENDANT: No, sir.
THE COURT: Okay. Anything else we need to take up this morning?
MR. MURRAY: No, Your Honor.
THE COURT: What about you, Mr. Hill?
THE DEFENDANT: No further.
THE COURT: Okay. We'll be in

recess.
(Proceedings concluded.)

CERTIFICATE OF REPORTER
STATE OF FLORIDA
COUNTY OF ESCAMBIA

I, CHARLOTTE P. BINGHAM, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 15j inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. PAUL JENNINGS HILL, Case No. 94-3510, on the 24th day of October 1994, before the Honorable Frank L. Bell, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the ~ day of January 1995.

/S/Charlotte P Bingham, RPR

CHARLOTTE P. BINGHAM/RPR

Official Circuit Court Reporter

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing Certificate was acknowledged before me this 25 day of January 1995, by CHARLOTTE P. BINGHAM, who is personally known to me.

/s/ Deborah R. Trollinger
Notary Public, State of lorida

DEBORAH R. TROLLINGER
"Notary Public-State of Florida"
My Commision Expires Aug. 1, [blank]
CC132462

IN THE CIRCUIT COUFT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA.

Plaintiff,

vs. Case No. 94-3510-J

PAUL JENNINGS HILL,

Defendant.

STATE OF FLORIDA'S MOTION
IN LIMINE #1 TO PRECLUDE THE
DEFENSE OF NECESSITY/JUSTIFICATlON

Comes now the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to FRCrP 3.190(a) and files this Motion in Limine which moves this Honorable court for an order preventing the Defendant from eliciting, presenting, commenting or arguing any evidence to the jury which would constitute the defense of necessity or justification for the actions of the defendant which are

charged in the indictment and forms the basis for this cause of action.

As grounds for this motion. the State of Florida alleges and asserts that:

1. The Defendant is charged with the First Degree Murder of Dr. John Britton and Col. James Barrett on July 29, 1994. In addition, the Defendant is charged with the Attempted First Degree Murder of June Barrett on the same date.

2. Prior to the murders, the defendant was active in the "Pro-Life" movement and had participated in protests against elective abortions on a regular basis at the Ladies Center which was the scene of the murders.

3. The victim, Dr. John Britton, was a physician who performed first trimester

elective abortions at the Ladies Center on a weekly basis. The victim was scheduled to perform these duties on the morning of his murder.

4. The victims, Col. James Barrett and his wife June Barrett, were volunteer escorts for patients receiving reproductive health services at the Ladies Center. On the morning of the murders, the Barretts had picked Dr. Britton up at the airport and transported him to the Ladies Center. Upon their arrival at the Ladies Center they, along with Dr. Britton, were gunned down by the Defendant.

5. The victim's actions and intended actions at the time of the offense were constitutionally protected activity under both the United States Constitution and the State of Florida

Constitution.

6. Any evidence of the Defendant's political and/or religious views concerning the issue of abortion are not legally logical or relevant to any material fact at issue in this cause of action.

7. Any evidence of the Defendant's political and/or religious views concerning the issue of abortion as a reason for his actions charged in the indictment are not legally logical or relevant to any material fact at issue in this cause of action.

8. Evidence of the Defendant's political or religious views concerning the issue of abortion is highly inflammatory and prejudicial and thus outweighs any probative value the evidence might have before the jury.

9. The defense of necessity and/or justification cannot be used as a defense to a criminal act which was committed to prevent activity which is protected both by the United State Constitution, the Florida State Constitution, Federal Statutes and the Statutes of the State of Fiorida.

Wherefore the State of Florida moves this Honorable court to enter an order preventing the defendant ~rom eliciting, presenting, commenting or arguing any evidence to the jury which would constitute the defense of necessity or justification for the acbons of the defendant which are charged in the indictment and forms the basis for this cause of action.

I hereby cenify that I have ~onvanded a copy of the foregoing motion to the

Defendant and his standby counsel. Dee Loveless, Esq. on this 14th day of October.

/s/ James R. Murray
JAMES R. MURRAY
ASSISTANT STATE ATTORNEY
FLORIDA BAR NUMBERR 299162

THE CIRCUIT COURT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
vs. CASE NO. 94-3510
PAUL JENNINGS HILL,
Defendant.

----------/

Proceedings held in the above-styled cause before the Honorable Frank L. Bell, Circuit Judge, on the 24th day of October 1994, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida.

APPEARANCES:

FOR THE STATE: JAMES MURRAY, ESQUIRE
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32501

FOR THE DEFENDANT: Paul Hill, Pro se

DEFENDANT'S STANDBY COUNSEL: EARL D. LOVELACE, ESQUIRE
J. PETER FRANCE, ESQUIRE
Assistant Public Defenders
190 Governmental Center
Pensacola, Florida 32501

CHARLOTTE P. BINGHAM, RPR
CIRCUIT COURT REPORTER

COPY

IN THE CIRCUIT COURT IN
AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,
vs. Case No. 94-3510-J
PAUL JENNINGS HILL,
Defendant.

STATE OF FLORIDA'S MEMORANDUM OF LAW IN SUPPORT OF THE STATE'S MOTION IN LIMINE #1

Comes now the State of Florida, by and through the undersigned Assistant State Attorney and files this Memorandum of Law in support of the State of Florida's Motion in Limine #1 to preclude the Defense of Necessity/Justification.

The Defendant is charged with two (2) counts of First Degree Murder and one (1) count of Attempted First Degree Murder in violation of Chapter 782, Florida Statutes. In addition, the Defendant is

charged with one (1) count of Shooting into an Occupied Vehicle in violation of Chapter 790, Florida Statutes.

Motion in Limine #1 was filed by the State of Florida because of the Defendant's expressed intention to rely on the defense of necessity or justification. The Defendant attempted to assert this position as a defense in the collateral Federal case which was tried earlier this month. The government filed a Motion in Limine and the Federal court entered an order precluding the Defendant from attempting to utilize his beliefs on the abortion issue as a defense against the indictment which charged a violation of the federal "Freedom of Access to Clinic Entrances Act."

The defenses and testimony/evidence

concerning the Defendant's personal beliefs concerning the abortion issue which the State of Florida has moved to preclude is irrelevant, immaterial, and thus inadmissible on the elements of the crimes charged in the indictment, see, Section 90.609, Florida Statutes.

The Florida Supreme Court in Re: T. W., A Minor, 551 So.2d 1186 (Fla. 1989) ruled that the State may not restrict access to abortion during the first trimester and only under limited circumstances within the second trimester. The decision was based on Article 1, Section 23 of the Florida Constitution which preserves the "Right to Privacy" for citizens of this state. Thus the right to obtain an abortion is a constitutional right within the State of Florida and the nation as a whole, see, Roe v. Wade, 93 S.Ct. 705 (1973).

Admission of evidence which espouses views about the moral issues concerning the issue of abortion is thus irrelevant and immaterial to the issues concerning the elements of the crimes charged in the indictment.

The defense of necessity or justification is an affirmative defense which essentially excuses otherwise criminal conduct that is committed for the purpose of prevent an imminent greater harm, see, U.S. v. Bailey, 100 S.Ct. 624 (1979).

The Defendant must be able to show four (4) essential elements before he can assert a necessity/justification defense:

1. that he was faced with a choice of evils and chose the lesser evil, and
2. that he acted to prevent imminent

harm, and

3. that he reasonably anticipated a causal relation between his conduct and the harm to be avoided, and

4. that he had no legal alternatives.

The Defendant in this cause of action fails on all four of the required elements.

The only case which the undersigned was able to locate within the State of Florida which dealt with the issue of whether a defendant charged with a crime involving a clinic that provides elective abortion services and attempted to assert a defense of necessity/justification is State vs. Judith A. Madsen, Pinellas County Court Case #8915146 which was affirmed by the Circuit Court of Pinellas County and cert. denied, 581 So.2d 1320 (2nd DCA

1991).

The order entered by the Pinellas County Court Judge is attached as Exhibit "A" which is hereby incorporated into and made a part of this Memorandum of Law. The court's reasoning in Madsen is sound and in accord with **every** Federal court which has considered the issue of whether the defense of necessity/justification can be asserted by a Defendant who is charged with a crime evolving from a clinic providing elective abortion services.

The Madsen, id. correctly recognized that abortion is not a ~legal harm" or "evil" and that there are viable alternative methods of enacting legislation or seeking redress of grievances in the courts.

There are two other Florida cases

involving the necessity defense; Linnehan v. State,454 So.2d 625 (2nd DCA 1984) and Yoos v. State, 522 So.2d 898 (5th DCA 1988). Both of these cases involved defendants who were charged with crimes involving their opposition to nuclear weapons. The defendants in both cases attempted to assert the necessity defense. The Second District Court of Appeal and the Fifth District Court of Appeal both rejected the assertion of the defense as being relevant or applicable to the crimes charged, see also. U.S. v. Montaomery, 772 F.2d 733 (11th Cir. 1985) and U.S. v. Kabat, 797 F.2d 580 (8th Cir. 1986).

As mentioned above, every Federal Court that has considered whether the defense of necessity/justification is available to a Defendant who is charged

with an abortion related crimes has rejected the defense.

The Ninth Circuit Court of Appeals in Zal v. Steppe, 968 F.2d 924 (9th Cir. 1992) held that elective abortions provided under state law is not a "legally recognized harm," p. 929. Since abortion is not a harm or evil at law. the necessity defense in inapplicable. The court went on to state that the defendants had legal alternatives, thus the defense would fail on two of the four prong which would have to be met. The Third Circuit Court of Appeals in Northeast Women's Center v. McMonagle, et. al, 868 F.2d 1342 (3rd Cir.), cert. denied,110 S.Ct. 261 (1989) and Roe vs. OPeration Rescue, 919 F.2d 857 (3rd Cir. 1990), cert. denied, (1991) rejected the applicability of the justification

defense to defendants in a civil case who were attempted to disrupt activities at a clinic providing elective abortions, see also, Now vs. Operation Rescue, 747 F.Supp. 760 (D.D.C.1990) which recognized that women seeking abortions were exercising a federal constitutional right.

The courts of Alaska, Arkansas, Illinois, Nebraska, North Dakota, Maryland, Minnesota, Missouri, Pennsylvania, Texas and Wisconsin have all rejected the defense of necessity or justification as being properly asserted by defendants charged with crimes connected to activities in opposition to elective abortions. These courts have dealt with this issue since 1980 and have consistently held that the defense is inapplicable to a constitutionally

protected right, see,

PeoPle vs. Krizka, 416 N.E.2d 36 (App. Ct. 111. 1980)

People vs. Stiso, 416 N.E.2d 1209 (App. Ct. 111. 1981)

Cleveland vs. Municipality of Anchorage, 631 P.2d 1073 (Aka. 1981)

Sigma ReProductive Health Center vs. Maryland, 467 A.2d 483 (Ct. App. MD. 1983)

Wisconsin vs. Horn, 377 N.W.2d 176 (Ct. App. Wis. 1985)

Pursly vs. Arkansas, 730 S.W.2d 250 (Ct. App. Ark. 1987)

Pennsylvania vs. Wall, 539 A.2d 1325 (Pa. 1988)

Buckley vs. City of Falls Church VA, 371 S.E.2d 827 (Ct. App. Va. 1988)

Missouri vs. O'Brien, 784 S.W.2d 187 (Ct. App. Mo. 1990) Bird vs. MunicipalitY of Anchorage, 787 P.2d 119 (Ct. App. Aka. 1990)

North Dakota vs. Sahr, 470 N.W.2d 185 (ND 1991)

Egger vs. Texas, 817 S.W.2d 183 (Ct. App. Tx. 1991)

Minnesota vs. Rein, 477 N.W.2d 716 (Ct. App. Minn. 1991)

Nebraska vs. Cozzens, 490 N.W.2d 184 (Neb. 1992)

All of these courts have held that Defendants who criminally interfere with the exercise of a constitutional right to abortion cannot, as a matter of law, prove the essential elements of the necessity/justification defense thus

allowing the presentation of evidence to the jury.

The Model Penal Code. Section 3.02(1)(c) clearly states that the necessity/justification defense cannot stand where a legislative purpose sanctioning the activity complained of by the defendant has been passed into law.

The Florida Legislature in passing Chapter 390, Florida Statutes has clearly precluded the common law defense of **necessity or justification.** Failing **to recognize this** fact would allow individuals to commit violent criminal acts with impunity, whenever they deem someone else's constitutional right to be a greater evil. The Defendant in this case is attempting to justify his violent criminal acts on exactly these

grounds.

Allowance of the necessity or justification defense under these set of circumstances would invite anarchy. Specifically such a ruling would allow any abortion opponent to slaughter with impunity, doctors and medical personnel who are attempting to vindicate the constitutional right of a woman to an elective, statutorily sanctioned, abortion. The court in Wall, id., 539 A.2d at 1330, in dealing with this point noted:

> "In a society of laws and not of individuals, we cannot allow each individual to determine, based upon his or her personal beliefs, whether another person may exercise her constitutional rights and then allow that individual to assert the defense of justification to escape criminal liability."

The court in Madsen, id. noted:

> "(allowing the defense of necessity/justification) would be tantamount to abrogating the basic principles of the United States Constitution and denigrate the millions who have given the ultimate sacrifice to defend that document and the principles embodied within. The result would be anarchy. Differing religious denominations, racial and ethnic groups, political organizations, in short, the follower of any idea or belief, no matter how repugnant, would be endowed with the right to inflict that particular belief upon the unwilling **by force** with the only test being the sincerity of the believers," at p. 8.

The Defendant is this case slaughtered two citizens and nearly killed a third because he disagreed with the assertion of a constitutionally protected right by women who were seeking elective abortions that were constitutionally and statutorily protected. The Defendant is opposed to abortion, believes life begins at conception and that abortion constitutes

the murder of a living being. These matters are not at issue in this cause of action and are legally irrelevant and immaterial. The admission of evidence concerning the morality of abortion would confuse the legal points at issue and do violence to the Constitutions of the United State and the State of Florida, and the criminal justice system of the State of Florida. Such evidence is a blatant effort by the Defendant to encourage the jurors in this cause of action to ignore the law, see Florida Standard Jury. Instruction 2.05, without regard to their personal feelings regarding the merits of the law, see Florida Standard Jury Instruction 2.09. Based upon the judicial authorities cited above as applied to the facts of

this case, the State of Florida moves this Honorable court to enter an order that the defense of necessity/justification is not relevant or material to the issues associated with the elements of the crimes charged in the indictment.

The State of Florida also moves this Honorable court to enter an order directing the Defendant to proffer all testimony, evidence and argument concerning the morality of abortion or his views on abortion prior to presentation before the jury.

I hereby certify that a copy of this Memorandum was delivered by hand to the Defendant on 24th day of October, 1994.

/S/JAMES R. MURRAY
ASSISTANT STATE ATTORNEY
Florida BAR NUMBER 299162

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The State of Florida also moves this Honorable court to enter an order directing the Defendant to proffer all testimony, evidence and argument concerning the morality of abortion or his views on abortion prior to presentation before the jury.

I hereby certify that a copy of this Memorandum was delivered by hand to the Defendant on 24th day of October, 1994.

/S/JAMES R. MURRAY
ASSISTANT STATE ATTORNEY
Florida BAR NUMBER 299162
A-225

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs. CASE NO : 94- 3150
DIVISION: "J"

PAUL J. HILL,
Defendant.

VERIFIED MOTION FOR LIMITED AND SPECIAL APPEARANCE PRO HAC VICE

COMES NOW the undersigned counsel, Vincent F. Heuser, Jr., at the request of the Defendant, Paul J. Hill, pursuant to Rule 2.060(b), Florida Rules of Judicial Administration, and moves this Honorable Court for permission to appear in a limited and special capacity on the Defendant's behalf for the purpose of oral argument on the State's pending Motion in Limine to preclude the Defendant's presentation at trial of the

affirmative defense of justifiable force, and as grounds therefore, would show the Court the following:

1. I am a current member in good standing in the Bar of Kentucky.

2. I am also a current member in good standing in the United States District Court of the Western District of Rentucky, and have been admitted pro hac vice in the Circuit Courts of the state of Indiana, and am currently enrolled as a panel attorney for the Federal Public Defender for the Western District of Rentucky.

3. I have not previously applied for permission to appear in Florida.

STATE OF FLORIDA
COUNTY OF ESCAMBIA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to administer oaths and take acknowledgements, personally appeared **Vincent F. Heuser,** who is personally known to me to be the person described herein and who after taking an oath to state the truth, executed the foregoing verified Motion.

WITNESS hand and official seal in the County and State aforesaid this 24th day of October, 1994.

/s/Vincent F. Heuser.
Vincent F. Heuser
RBA Number: 83555

/s/Elaine Richbourg
NOTARY PUBLIC

(SEAL)

Typed Name: Elaine Richbuorg
Commission Number:
My Commission Expires:

ELAINE RICHBOURG
"Notary Public -State of Florida" My Commission Expires March 5, 1996
CC177636

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs. Case No. 94-3510-J

PAUL JENNINGS HILL,
Defendant.
_____/

ORDER GRANTING THE STATE OF FLORIDA'S MOTION IN LIMINE #1

The State of Florida having brought on for hearing a pretrial motion captioned, Motion in Limine #1; the court having reviewed the motion and the memorandums of law submitted by both the State of Florida and the Defendant, heard argument from both parties concerning the motion, and being otherwise advised in the premises; it is therefore

ORDERED AND ADJUDGED that the State of Florida's Motion in Limine #1 seeking to

Locke, SECOND TREATISE OF GOVERNMENT (1690) 20
McKechnie, MAGNA CARTA; THE GREAT CHARTER OF KING JOHN, ART. 41 17
Milton, "*Aeropagitica*" (1644) 18
Rotunda, TREATISE ON CONSTITUTIONAL LAW (Vol. 1) §§ 6.1 n.2, 15.11 n.4, & 23.8 7
Noonan, Contraception, 86-88 (Harv. U. Press, 1965). 19
Note, PROBATE CODE CONSERVATORSHIPS A LEGISLATIVE GRANT OF NEW PROCEDURAL PROTECTIONS (1977) 8 Pacific L.J. 73 10
Pardoning Power of the President, 5 Opinion U.S. Atty. Gen. 532, ... 6
Perkins, CRIMINAL LAW AND PROCEDURE (Foundation press, 4th Ed., 1972), ... 7, 10, 11
Restatement (1st) Contracts, § 77 21
Rotunda (Vol. 3) § 23.20,fn. 2 16
Rotunda, TREATISE ON CONSTITUTIONAL LAW (Vol. 1) § 3.12 n.2 6
Rotunda, TREATISE ON CONSTITUTIONAL LAW (Vol. 1) §§ 3.1, 3.2 6
Schwartz, The Bill of Rights, A documentary history 19
Statute of Westminster (1275) 1, c. 15 11
The International Covenant on Civil and Political Rights, Part III, art. 6(2) 9
United Nations Conference on the Law of Treaties [Vienna Convention], Art. 43, 53 9
Verdross, *Forbidden Treaties in International Law*, 31 AJIL 571 6
Verdross, *Forbidden Treaties in International Law*, 31 AJIL 571 (1937) 8, 20
Verdross, *Jus Dispositivum and Jus Cogens in International Law*, 60 AJIL 55 (1961) ... 6, 8, 21

Case No. 96-1957

In The
Supreme Court of the United States

October Term, 1996

PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF FLORIDA

MOTION FOR LEAVE TO FILE AMICUS CURIÆ BRIEF, AND
BRIEF OF AMICI CURIÆ THE FRIENDS OF
PAUL JENNINGS HILL
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX

MOTION FOR LEAVE TO FILE AMICI CURIÆ BRIEF

The Friends of Paul Hill move for leave to file a brief in support of the petition on the grounds there are issues, and refinement of issues, not be adequately dealt with in the Petition, the Friends were permitted to file such a brief covering the additional issues in the Florida Supreme Court, the brief will aid this court in reaching a just result in this case, and a capital Petitioner should have as much help as possible. Counsel fax'd a copy of this document and called Counsel of Record, but neither takes a position at this time.

The interest of Amici follows.

Dated June 23, 1997

JAMES JOSEPH LYNCH, JR.
Attorney At Law (SBN 85805)
1562 Response Drive
P.O. Box 336
Sacramento, CA 95812-0336
Office: (916) 448-7871
Fax: (916) 448-0549

Counsel for Amicus Curiae

INTEREST OF *AMICI CURIÆ*

The Friends of Paul Hill are an unorganized group of individuals scattered throughout the United States who have contributed to the provision of this brief in his behalf. Counsel for the Friends has a similarity of purpose, to wit, an attorney admitted to practice law in the highest court of the State of California, who has taken an oath to uphold and defend the Constitution of the United States and to defend the poor, down trodden, and oppressed. He has presented a similar *Amicus Curiæ* Brief in *Webster v. Reproductive Health Services*, 109 S.Ct. 3040 (1989); *Ohio v. Akron Reproductive Ctr*, 497 U.S. 502 (1990); *Hodgson v. Minnesota v. Hodgson*, 497 U.S. 417 (1990) *Turnock v. Ragsdale*, 503 U.S. 916 (1992); *Bray v. Alexandria*, 113 S.Ct. 753 (1993); *Planned Parenthood v. Williams*, 10 Cal.4th 1009 (1994). He is a former professor of Law, University of Northern California, Lorenzo Patiño School of Law. He is affiliated with, but does not represent, a number of pro-life groups and has himself concentrated his practice in the areas of Civil Rights Law, Human Rights Activities, Constitutional Law, and Criminal Defense. He is the author of ABORTION AND INALIENABLE RIGHTS IN AMERICAN JURISPRUDENCE: A PROSPECTIVE POLICY (© 1986), AND POSTERITY: A CONSTITUTIONAL PEG FOR THE UNBORN, 40 AJJ 410 (1995). He lived four years in England where he engaged in a self-directed study of the English Political System from the inception of the *Magna Carta* (1215). He is a graduate of McGeorge School of Law (1978).

Friends believe that pro-life individuals should not take human life without substantial justification. On the other hand, they are firmly committed to the proposition that the unborn are persons in the constitutional sense whose life ought not to be taken without substantial justification either. In that regard they do not believe that Paul Hill received a fair trial as to whether his acts on that particular occasion, in the defense of the unborn, were justified. They are also concerned that the rights of that the unborn, in this, and other litigation, have been unrepresented or underrepresented as to their interest in the outcome.

STATEMENT OF THE CASE AND FACTS

Amici Curiæ adopt by reference Petitioner's statement of the case and facts. Pet., p. 7.

SUMMARY OF REASONS FOR GRANTING WRIT

1.Review is required because it appears that Hill was given faulty Farretta advisements, did not qualify to represent himself, and prejudiced by a denial of a meaningful access to the courts to provide the following defenses:

> a. Based on exhaustive research on the use of the death penalty, the jury should have been instructed that the death penalty could be applied, if at all, only if the state demonstrated beyond a reasonable doubt that the state could not protect society by mere incarceration.
>
> b. Based on new research, the ruling in *Heath v. Alabama*, 474 U.S. 82 (1985) that dual sovereignty allows multiple punishment is inconsistent with the common law, ,and therefore Hill was denied an opportunity to show, if there is a basis, the death penalty was barred under the doctrine of double jeopardy.

2. In view of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), review is required because it appears to have been unreasonable for the court below to refuse the defense of the right to use reasonable force, and deadly force if reasonable, in the defense of others, to wit the unborn because they are members of posterity" as used in the Preamble of the Constitution, and therefore a person entitled to a defense.

REASONS FOR GRANTING WRIT

I.

BECAUSE OF FARETTA ERRORS, HILL WAS DENIED AN OPPORTUNITY TO PRESENT EMERGING THEORIES AS TO THE APPLICATION OF THE DEATH PENALTY, AND A POTENTIAL PLEA OF DOUBLE JEOPARDY

A. EMERGING STANDARDS SUGGEST A JURY INSTRUCTION MUST INFORM THE JURY THAT BEFORE A VERDICT OF DEATH CAN BE RETURNED, THE STATE MUST DEMONSTRATE BEYOND A REASONABLE DOUBT IT CANNOT CONTROL DEFENDANT'S CONDUCT BY MERE INCARCERATION.

1. Introduction.

The constitutional prohibition against cruel and unusual punishment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by humane justice." *McCleskey v. Kemp*, 481 U.S. 279 *citing Weems v. United States*, 217 U.S. 349 (1910), 378. "[T]he 'basic concept underlying the 8th Amendment' in this area is that the penalty must accord with the 'dignity of man.'" *Id*, *citing Trop v. Dulles*, 356 U.S. 86 (1958), 99, 100. Decisions in this area have been informed by "contemporary values concerning the infliction of a challenged sanction."

McCleskey, citing Gregg v. Georgia, 428 U.S. 153 (1976), 173.

A survey of "contemporary values concerning the infliction" of the death penalty suggests there are three objective evolving standards of decency which restrict when the death penalty may be inflicted: (i) a re-examination of the 8th Amendment in the context of the amount of force which a state may use to defend its citizens; (ii) a historical retreat from infliction of the death penalty in all felonies to those limited circumstances when a victim is killed, and there is the requisite culpability; (iii) a historical retreat from public executions.

However, because of Farretta errors, Hill was denied an opportunity to marshal legal arguments and present them, with supporting facts, to the court. He was prejudiced because the emerging standards demonstrate a potentially meritorious claim the state may impose the death penalty, if at all, only on a showing that the state can not control Hill's conduct by mere incarceration. As an important instruction was not given, review is required to determine whether reversal is automatic and mandatory. *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993).

2. Constitutional Premise & Framework; the People Can Only Delegate Reasonable Force for the Protection of Society.

Sovereignty resides in the People. U.S. Constitution,[1] Preamble ["We, the People"].[2] The federal pow-

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[1] In the solution of constitutional questions the same rule of interpretation, and sources of judicial information, may be resorted to as in the construction of statutes and other instruments granting power. *Adams v. Storey*, 1 Paine (U.S.) 79, 1 Fed. Cas. No. 66 (1817) . The constitution and the law are to be expounded without leaning one way or the other, according to those general principles which usually govern the construction of fundamental

ers are expressly recognized as being delegated powers. U.S.Const., 10th Amendment. 1 Rotunda, Treatise on Constitutional Law §§ 3.1, 3.2. By its terms, the 10th Amendment implies that powers are delegated by the People to the State, and the concept is written into the California Constitution's Preamble.[3]

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or other laws. *Bank of the United States v. Deveaux*, 5 Cranch (9 U.S.) 61, 85 (1809) . No word or clause can be rejected as superfluous or unmeaning, but each must be given its due force and appropriate meaning. *Wright v. United States*, 302 U.S. 583, 588 (1938) . Words and terms are to be taken in the sense in which they were used and understood at common law and at the time the constitution and the amendments were adopted. *Veazie Bank v. Fenno*, 8 Wall (75 U.S.) 533, 542 (1869) ; *Locke v. New Orleans*, 4 Wall (71 U.S.) 172, (1866) ; *Gibbons v. Ogden*, 9 Weat. (22 U.S.) 1, 188-189 (1824) ; *United States v. Harris*, 1 Abb. (U.S.) 110, 26 Fed. Ca. No. 15,312 (1866) ; *United States v. Block*, 4 Sawy. (U.S.) 211, 24 Fed.Cas. 14,609 (1877) ; Pardoning Power of the President, 5 Opinion U.S. Atty. Gen. 532, 535 (1852) . Where there are several possible meanings of the words of the constitution, that meaning that will defeat rather than effectuate the constitutional purpose cannot rightly be preferred. *United States v. Classic*, 314 U.S. 707 (1941).

[2] While the result in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), may be correct, its *ratio decidendi* does not square with the Preamble and Article I §§ 9 & 10. Clearly, the President does not stand in the shoes of the King, because titles of nobility were abolished for an intended purpose. Farrands 28-33; Federalist Papers, ## 32, 39;. The framers placed sovereignty in the People. *Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857) .

[3] The United States was established in the light of the Hobbs/Locke Theory of Social Contracts wherein the Government is established to protect the welfare of its citizens at home. 1 Rotunda 3.12 n.2. This is an internationally recognized duty of Nations. Verdross, *Jus Dispositivum land Jus Cogens in International Law*, 60 AJIL 55 (1961); Verdross, *Forbidden Treaties in International Law*, 31 AJIL 571-577 (1937) ;. and recognized in the Preamble; and Art. I, § 8; of the U.S. Constitution. See also, California Constitution, Preamble ["We, the People"]; Cal. Govt. C. § 100(a).

It has always been recognized that a Person could only grant that estate which he possessed. Blackstone, Commentaries on the Laws of England, Vol. 2, page 290;[4] Cheshire, THE MODERN LAW OF REAL PROPERTY, p. 660 (Citing common law principles). At the time the constitution was drafted, an individual could use only reasonable force for self-defense, and deadly force only when met with deadly force and its use is reasonable. If the attacker retreats or abandons the fray, then the victim can no longer use deadly force. Foster, CROWN LAW 273-277 (1762); *Brown v. United States*, 256 U.S. 335 (1921); Perkins, CRIMINAL LAW AND PROCEDURE (1972) 660-667; *Tennessee v. Garner*, 471 U.S. 1 (1986).

Because an individual at common law could only use reasonable force, and deadly force if reasonable [*Foster*], that is all the power the individual collectively could delegate to the States, hence the State may only use reasonable force, and deadly force if reasonable.[5] *Garner.*

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[4] Blackstone; is a recognized source of the common law in aid of interpreting the U.S. Constitution. 1 Rotunda §§ 6.1 n.2, 15.11 n.4, & 23.8; n.1, para. 5 (p. 484, left column).

[5] Statutes or practices inconsistent with the Constitution, however numerous, can create neither a power which the Constitution does not bestow nor furnish a construction which the Constitution does not warrant. *Field v. Clark*, 143 U.S. 649, 691 (1891); 3 Rotunda, Treatise on Constitutional Law § 23.33, p. 512 (1986). The Court, with characteristic good grace, invalidated its own Rules of Court, in part, based on a Congressional Statute requiring attorney's to take an oath with respect to their activities before the civil war, when it was pointed out that the provision was in fact unconstitutional. *Ex Parte Garland*, 4 Wall. 333 (1867). Faced with the Constitutionality of "separate but equal facilities, a practice in existence throughout the south for nearly 60 years, and sanctioned by the Court, the Court overruled, and rightfully so, *Plessy v. Ferguson*, 163 U.S. 537 (1896) in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) (*Brown I*). *Accord, Bolling v.*

Because of the Farretta error, Hill was denied an opportunity to bring this to the Court's attention, therefore reversal is required. *Sullivan, supra.*

3. International Law Proscribes the Use of Unreasonable Force in Defense of State Interests

The rules of self-defense apply to states in International Law.[6] United Nations Charter, Chapter VI [commencing with Article 33]. It is considered a rule of *jus cogens*, vis peremptory norm of international law, from which no state may derogate. Verdross, *Jus Dispositivum and Jus Cogens in International Law*, 60 AJIL 55 (1961), 60, #3; Id, *Forbidden Treaties in International Law*, 31 AJIL 571-77.[7] The concept is pre-

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Sharpe, 347 U.S. 497 (1954). Moreover, where the importance of the question is great, and touches sensitive issues which need to be resolved once and for all, this court has not allowed the fact that some issues were not properly addressed in the courts below from ordering further argument on the omitted issues so that the continuing controversy could be settled. *Brown I*, 347 U.S., at 488-89, 496 (1954); *Brown v. Bd. of Education*, 349 U.S. 289, 294, 298 (1955) (*Brown II*) (Nature of remedy to be utilized). Such is the case at bench. This court can judicially notice its own docket, which has been impacted by abortion cases. Similarly, it is common news that throughout the country, abortion controversy has led to disorder in the streets. It is not suggested that the disorder is the reason for overruling Roe. Quite the contrary, the reason is because a fetus is a person in the Constitutional sense by virtue of the term Posterity found in the Preamble. The notation of the problem is put a recognition that the problem must be resolved.

[6] Courts are bound by the law of Nations which is part of the law of the land. *The Nereide*, 13 U.S. 388 (1815); *INS v. Cardozo-Fonesca*, 480 U.S. 421 (1987) ; *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir., 1980).

[7] In *People v. Ghent*, 43 Cal.3d 739 (1987), the court rejected an argument that the United Nations Charter and Declaration on Human Rights precludes the imposition of the death penalty, and in any event before those documents may be utilized,

served in the United States Constitution, Art. *I*, § 1 (No State shall, ... engage in War, unless actually invaded ... imminent Danger ...). It has been tacitly recognized by *stare decisis*. *Tennessee v. Garner*, 471 U.S. 1 (1986) [Striking down State's fleeing felon statute].

Once an individual is incarcerated, that is all the force required to protect society from further harm and the death penalty[8] therefore would be cruel and unusual punishment, unless the State shows, in a given case, beyond a reasonable doubt that society cannot protect itself by mere incarceration.

Because of the Farretta error, Hill was denied an opportunity to bring this to the Court's attention, therefore reversal is required. *Sullivan, supra.*

4. Where Persons Are A Danger to Society, Incarceration is the Norm.

In *Barefoot v. Estelle*, 463 U.S. 880 (1983) it was held that it was proper for the jury to consider whether or not defendant would commit criminal acts in the future and thus pose a threat to society. How-

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they must be either be implemented by Congress or self-executing. However, rules of *jus cogens* are recognized by multinational pact. The United Nations Conference on the Law of Treaties [Vienna Convention], Art. 43; [Obligations imposed independently of treaty], Art. 53 [*jus cogens* and void treaties], U.N. Doc. A/Conf. 39/11. Moreover, Verdross points out that these laws, by their very nature, are self-executing. Finally, no argument is made here that the death penalty is barred; rather the argument centers on what process is due before it may be imposed.

[8] The International Covenant on Civil and Political Rights, Part III, article 6(2), declares: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime ...." Ratified by the United States and 71 other countries, effective March 23, 1966. *E.g., People v. Ghent*, 43 C.3d 739 (1987) (Dissenting Opinion by Broussard and Mosk, JJ).

ever, the court went on to say in *Solem v. Helm*, 463 U.S. 277 (1983), that we will not assume that there is no rehabilitative opportunity. *Accord, Hitchcock v. Dugger*, 481 U.S. 393 (1987) [reversing death penalty for refusal to consider mitigating circumstances].

Every day we incarcerate People who pose a threat to society. LPS Act, Welfare & Institutions Code § 5000, *et seq.*; Probate Code, § 1400, et seq.; Conservatorship and Wardship, Welfare & Institutions Code § 200, et seq.; Generally, NOTE, PROBATE CODE CONSERVATORSHIPS: A LEGISLATIVE GRANT OF NEW PROCEDURAL PROTECTIONS (1977) 8 Pacific L.J. 73. Thus, the relevant inquiry is not whether the defendant poses a future threat to society, an entirely speculative and subjective opinion of what may happen, but whether or not society can effectively control the behavior by incarceration, with a possibility of rehabilitation. That is to say, the emerging standards of decency is such that the State may not exact the death penalty unless it demonstrates beyond a reasonable doubt that it cannot protect society by mere incarceration.

Because of the Farretta error, Hill was denied an opportunity to bring this to the Court's attention, therefore reversal is required. *Sullivan, supra.*

5. There has been a Gradual Withdrawal of the Death Penalty As A Form of Punishment, and Withdrawal From Public View When Used.

At common law, all felonies, regardless of whether death resulted, and in theft cases, regardless of the amount taken, warranted the death penalty, except mayhem for which mutilation was substituted. Perkins, Criminal Law and Procedure (Foundation press, 4th Ed., 1972), p. 4-5. Whipping was substituted for death as the penalty for petite larceny, but that was a change from the common law resulting from an early

statute. Id. Statute of Westminster, 1, c. 15 (1275). In the words of Blackstone, "the true criterion of felony is forfeiture." 4 Bl.Comm. *97. Modernly, few felonies are recognized as capital crimes. Perkins, at p. 5; *generally*, 4 Encyclopædia Britannica 847 (1971). Moreover, and notwithstanding *Apodaca v. Oregon*, 406 U.S.404 (1972), there is not a single jurisdiction left which allows the infliction of the death penalty with less than a unanimous jury verdict.[9]

The United States Supreme Court has recognized further restrictions upon the utilization of the death penalty. Thus in non-fatal felonies, the court held that the imposition of the death penalty was unconstitutional. *Coker v. Georgia*, 433 U.S. 584 (1977); *Eberhardt v. Georgia*, 433 U.S. 917 (1977). Similarly, in *Enmund v. Florida*, 458 U.S. 752 (1982), the court held that in felony-murder cases, the death Penalty was unconstitutional where the accomplice did not commit murder, nor intend that death result. Then in *Tison v. Arizona*, 481 U.S. 137 (1987), the Court distinguished *Enmund* on the basis that in *Enmund* "the degree of participation was so tangential that it could not be said to justify a sentence of death",[10] and held that "the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making capital sentencing judgment when

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[9] When *Apodaca* was decided, only two jurisdictions allowed the death penalty on less than a unanimous decision. Oregon required a 10-2 decision. Oregon has since repealed its death penalty, and Louisiana now requires a unanimous decision. ALI, MPC, p. 154.

[10] The court noted in *Tison* that in *Enmund* it conducted its own proportionality analysis. How about world wide proportionality analysis. Vis, England, Ireland, Canada, and France have all abolished death penalties. How many other countries? How many still have it? See Brennan's dissent.

that conduct causes its natural, though also not inevitable, lethal result."[11]

Congress at one point abolished the death penalty altogether. Pub.L. 98-473, Title II, §§ 212(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987-2020, 2031, effective November 1, 1987, adopting Chapter 227 - Sentences, 18 U.S.C. §§ 3551, et seq.[12] 10 States of the United States have abolished it. 4 Encyclopædia Britannica 847 (1971). Of 20 Latin American Countries, 10 have abolished it. Id. All but 4 Mexican States have abolished it. Id.[13]

At common law, and the early days of this Country, executions were a public affair designed as a deterrent. 3 Encyclopædia Britannica 404 (1971) [except heads of state]; 4 Id 847; 6 Id 825; 11 Id 64; 18 Id 556. At the restoration, Cromwell's body was exhumed, and his head displayed on a spike at the gates as a warning to all. 6 Encyclopædia Britannica 802. Common Law displays of execution have become a relict of the past. The last public execution occurred in Kentucky in 1936. 11 Encyclopædia Britannica 64. Under modern statutes, the public is excluded, witnesses limited to those found by law necessary to be present to assure the State that the law had been obeyed. Infliction of the death penalty has steadily been withdrawn from public view.[14] Former 18 U.S.C. § 3566 [Chap. 227]; California Penal Code § 3605. Thus, much of the de-

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[11] *Enmund* was outside in the getaway car, hence he was not in a position to stop the homicides by co-defendants even had he wanted to stop the homicides. In *Tison*, on the other hand, the defendants were at the scene of the homicides, and made no effort to curb their father.

[12] Congress did not reinstate the mode of execution until September 1, 1994. 18 USC Sec. 3596.

[13] See footnote 6.

[14] We can literally say "We have swept the death penalty under the carpet and out of view."

terrent effect is now gone, if there ever was any deterrent effect.[15] AC App., p. 8.

Thus, the emerging standards of decency has been withdrawal of the death penalty from all felonies to those felonies in which the victim dies as a proximate result of culpable personal conduct on the part of the defendant. Where the death penalty is imposed, it is hidden from the public eye, therefore lacks any significant impact on deterrence.

Because of the Farretta error, Hill was denied an opportunity to bring this to the Court's attention, therefore reversal is required. *Sullivan, supra.*

6. Conclusion

Capital punishment is no longer a universally recognized means of controlling human behavior. It has been withdrawn as a public spectacle, and restricted to a narrow class of cases in which a victim dies as a proximate result of the defendant's own culpable conduct. Most jurisdictions that do allow capital punishment require a unanimous verdict. Just as *Tison* teaches that some homicides are justifiable, anthropologists can show in recent modern time cultures that recognize cannibalism as socially acceptable. Youths who are left unguided, misguided by parents, or abused by others may well have grown up with maladaptive behavior through no fault of their own.

The sum total of the foregoing, implicit in *Garner*, is that the State may not use its sovereignty with any

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[15] The ALI Committee set out some rather stale statistical studies which failed to conclusively prove that capital punishment was or was not a deterrent. ALI, MPC, part II, vol. I, pp. 112-114. In the table hereinafter, using more current statistics, based upon the number of murders per hundred thousand, the rate remains fairly constant over the years with or without capital punishment suggesting an inelasticity for capital punishment. A statistician would be better qualified to render an expert opinion.

more force than is reasonably under the circumstances, and the death penalty only if it has demonstrated beyond a reasonable doubt that it cannot protect society by mere incarceration.

B. Hill Was Denied An Opportunity To Enter A Plea Of Double Jeopardy

It is not clear whether there is a factual basis for a plea, but that can be explained by the fact Hill was denied appropriate *Farretta* considerations, and thus denied meaningful access to the Courts. Assuming *arguendo* a potentially meritorious defense, in view of Hill's conviction and sentence of life in federal court, if the case involves the same set of facts necessary for guilt or death litigated in the federal case, then double jeopardy would apply, absent *Heath v. Alabama*, 474 U.S. 82, 96 (1985). However, current scholarly research suggests that the court erred in *Heath.*

D was tried, convicted, and given life in Georgia, then tried and given the death penalty for the same homicides in Alabama. Held: Dual Sovereignty does not bar second trial. *Heath v. Alabama*, 474 U.S. 82 (1985), 96. The court readily conceded had Georgia attempted a second shot to get the death penalty, it could not. The Court relied on *Moore v. Illinois*, 14 How. 13 (1852), 20; *United States v. Wheeler*, 435 U.S. 313 (1978), 317. The court over-looks the fact that Dual sovereignty is a concept rejected by itself in *Elkin v. United States*, 364 U.S. 206 (1960). The very concept is flawed in the United States where sovereignty is vested in the People. U.S. Constitution, Preamble; *Scott v. Sanford*, 60 U.S. (19 How.) 393 [The 13th & 14th Amendments enlarge the class of persons belonging to sovereignty]. As each State is a part of the whole, it is the Peace and Dignity of the People violated, whereever situated, and it can be punished but once. The concept was understood at Common Law to bar punishment for the same offenses committed

abroad. *Rex v. Hutchingson*, 2 Keb 785, 84 E.R. 1011 (16__?); *Hughes v. Cornelius*, 2 Show. KB 232, 89 E.R. 907, 89 E.R. 907 (1664) [Admiralty; Captain charged with piracy on the high seas pleaded in abatement he was found by an admiralty court in another country to have taken a prize according to articles of war; plea held to be good]; *Beake v. Tyrrell*, 3 Mod. 194, S.C. 1 Show 6, 89 E.R. 411 (1689?); *Rex v. Roche*, 1 Lench 134, 168 E.R. 169 (1775) [Plea withdrawn]; *Rex v. Sawyer*, 2 Car. & Kir. 101, 175 E.R. 41, 44 (1815); *Rex v. Elrington*, 9 Cox, Crim Cases 86, 121 E.R. 870 (1861); *Rex v. Sheen*, 2 Carr. & P. 634, 172 E.R. 287 (1827); *Rex v. Walker*, 2 Moo & Rob 446, 174 E.R. 345, 347 (1843). In *Roche*, quoting *Beake* on *Hutchingson' Case*, Hutchingson was tried and acquitted in Portugal, arrested in Newgate to be tried for the same murder, and it was agreed having been acquitted in Portugal, he could not be tried again in England.[16] Support for this common law tradition is found in the Constitution: Sovereignty vested in People (Preamble); Rights and limits of federal power (Art. I, §§ 8 & 9); rights and limits of State Power (Art. I, § 10; Art. IV, § 1 [supremacy; full faith

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[16] A reading of *Hutchingson's Case* itself shows it to be on a writ of *habeas corpus* on the grounds that the court lacked jurisdiction because the crime occurred in another country. Nonetheless all courts of record who quote the case cite it for double jeopardy. Research tends to indicate the case appears in the Bulletin of Nisi Prius, a local legal newspaper such as the Los Angeles Daily Journal or the Sacramento Daily Recorder. It appears to have been a celebrated case with a number of hearings in which ultimately the bar was held to be good. In *Roche's Case, Beake v. Tyrrell;* is *cited* as *Beak v. Thyrwhit;*. Furthermore, the official proceedings were often held in Latin or French in the Seventeenth Century, with only a brief public announcement in English, and many of the official reports were never translated. See volume 81 of the English Reports (N.S.). In Sawyer's Case, 175 E.R., at 44, at least one of the justices questioned *Hutchingson's Case*, but the bar was held good in any event. I have never found *Cottingham's Case*, but I am still looking for it.

and credit], 9th, 10th & 14th Amendments); limits on both federal and state power (1st [speech, petition, religion], 2nd [quartering of soldiers], 4th through 7th [rights of "people", "person", and "accused"]. By 28 U.S.C. §§ 1738 and 1739, Congress has made the full faith and credit clause applicable to federal courts. *Davis v. Davis*, 305 U.S. 52 (1938), 118 ALR 1518. *Heath v. Alabama*, 474 U.S. 82 (1985) should be *overruled* as being inconsistent with the warp and wolf of common law and American notions of double jeopardy *jurisprudence*. Other cases of note: *Ex Parte Lange*, 85 U.S. (18 Wall.) 163, 172 (1875); 3 Rotunda § 23.20,fn. 2. The constitution protects People, not places. The *Katz Doctrine*. It is absurd to believe that the Federal Government cannot deny rights; a state acting alone cannot deny rights; but the federal government acting in concert with a State, or two States acting in concert can. The Constitution protects People, not abstract notions of sovereignty the common law tradition of which has been abolished by Article I §§ 9 & 10.

Because of the *Farretta* error, Hill was denied an opportunity to bring this to the Court's attention, therefore reversal is required. *Sullivan, supra.*

II.

HILL WAS DENIED AN OPPORTUNITY TO SHOW THAT HE WAS DEFENDING A PERSON IN THE CONSTITUTIONAL SENSE

The Court below denied Hill an opportunity to justify his conduct as defense of third persons. IBA, pp. 53. If in fact the unborn are persons in the Constitutional sense, then Hill was privileged to use reasonable force in their defense. *Roe v. Wade*, 410 U.S. 113 (1973), is an aberration and should be discarded as unsound in principal and unworkable in practice because, in light of scholarly research, it appears that the court overlooked where in the Constitution the unborn

are persons in the constitutional sense, and thus entitled to the same protections as others.

Neither the 5th nor the 14th Amendment defines person. The 14th Amendment defines citizenship.[17] In other contexts, the court has held that aliens (*E.g., Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976); U.S. Const., Art. VI (Treaty Clause); McKechnie,[18] MAGNA CARTA; THE GREAT CHARTER OF KING JOHN, ART. 41 (ALIENS)) and non-natural person are person entitled to Constitutional protection. *E.g., Land v. Dollar*, 330 U.S. 731 (1947) (Replevin; Stock taken under color of law). Not to recognize the unborn is therefore an anomaly. As "Person" is used without qualification, the most logical place to look for meaning is the Preamble, [19] because, while its purpose is not to create rights,[20] it

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17 "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, ..."

18 McKechnie is the recognized scholar on the *Magna Carta*. 10 Halsburys Statutes of England (4th Ed.) Constitutional Law, 25 Edw. 1 (*Magna Carta*) (1297), Notes, § 3.5.

19 Recorded history first notes that a sovereign rules with the consent of the governed in 1 Sam. 16, 2 Sam. 5, 9-20, 1 Kings 1-2. There, David as a youth was anointed as the successor to Jesse, his father. When his father died, he ruled over the seven tribes of Judah for seven years. At that time, when Israel was doing poorly, they noted that Judah prospered under David, so they asked that he rule them as well. Thereafter David ruled over all of Israel and Judah for forty years. But there is nothing to indicate the right to rule was in writing. Other codes, most notably the Code of Hammurabi, were in writing, but were unilateral acknowledgments of human rights. Thus, the *Magna Carta, infra*, appears to be the first written document executed by both the sovereign and its subjects. The U.S. Constitution abolished traditional concepts of sovereignty, placed sovereignty in the People, signed by their representative, and ratified by them according to their respective state procedures. *Infra.*

20 *United States v. Boyer*, 85 F.425 (D.C., Mo., 1898) (Quoting Mr. Justice Storey on the Constitution, Section 462). *Cf., Hockett*

does define for whom the rights were created.[21] The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing.[22] The Preamble creates two classes of sovereignty: "Ourselves" and "our Posterity."[23] Its purpose appears to be to include "Posterity"[24] on an equal footing with, and the same rights as, "our selves" as evidenced by the parallel structure of the phrase. Therefore, "posterity," as to those who are lives in being, is synonymous, if not with "citizen,"[25] surly with "person."[26] This understanding is consistent with the meaning of 'posterity' in 1787 when the Constitution was signed.[27] In 1644, in a well known pamphlet, it was argued that Parliament can no more censure the issue of the mind than it can the issue of the womb."[28] At common law, it was understood that certain members of future generations, fetuses,[29] were a life in being

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v. State Liquor Licensing Board, 110 N.E. 485, 91 Ohio St. 176, L.R.S. 1971B, 7 (1915).

[21] *Scott v. Sanford*, 60 U.S. (19 How.) 393, 404 (1857). The 13th & 14th Amendments do not overrule this proposition. Rather, they redefine citizen (See, Article I, § 2, cl 3; § 9, cl. 1), and thus enlarge the class of persons who are citizens.

[22] See footnotoe at 21. See A.C. App., pp. 1-7.

[23] ABORTION AND INALIENABLE RIGHTS, etc., *supra*, at footnote 1, pp. 11-12.

[24] "Posterity" is capitalized in the original. As a noun is capitalized only if it identifies a particular person, place, or thing, it implies the framers considered the word important.

[25] See footnote 9, supra. It is probably more accurate to say the unborn is a person, who, upon birth, becomes a citizen (§ 1, 14th Amendment), except (26th Amendment) for the right to vote.

[26] See footnotes 17 and 24.

[27] ABORTION AND INALIENABLE RIGHTS, etc., supra, at footnote 1.

[28] Milton, John, "Aeropagitica" (1644).

[29] That a fetus has rights was probably recognized as early as 322 BC at least. Aristotle, *Politics*, VII, 1335b, 24-26; Acquinas,

for the purposes of the Rule Against Perpetuities.[30] Moreover, prenatal injuries, were to a limited extent, recognized at Common Law,[31] and it does not appear that tort actions for prenatal injuries were barred.[32] Had the framers used "and our heirs", it would have created the equivalent of a fee simple absolute with the powers of alienation,[33] a concept clearly inconsistent with the concept of "unalienable rights" found in the Declaration of Independence[34] and the concept of

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Summa Theologiæ, 1, q. 76, a. 5 and q. 118, a. 2; Noonan, Contraception, 86-88 (Harv. U. Press, 1965). The Old Testament provided a remedy for anyone causing a miscarriage. 21 Exodus 22. It does not offend the Establishment Clause of the 1st Amendment merely because civil enforcement corresponds to the tenants of some religious beliefs. *Generally, Witters v. Washington Dept of Social Svcs for the Blind*, 474 U.S. 481 (1986).

30 Gray, The Rule Against Perpetuities (4th Ed.); *Alamo School District v. Jones*, 182 Cal.App.2d 180, 6 Cal.Rptr. 272 (1960).

31 "To kill a child in its mother's womb is now no murder, but a great misprision: but if the child be born alive and death by reason of the potion or bruises it received in the womb, it is murder in such as administered or gave them." Lord Coke, repeated by Blackstone at Book IV, p. 198. Lord Coke's rationale rested on the impossibility of determining when life began, hence there would always be reasonable doubt as to whether or not murder had been committed. Two reasons may be advanced for that. First, at common law, "No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband." *Magna Carta* (1215), Article 54. Thus, a failure of evidence. Second, medical knowledge as to the status of a fetus was quite primitive when compared to modern medical practices.

32 *Sinkler v. Kneale*, 401 Pa 267, 164 A.2d 93, 94 (1960); *McIntosh v. Dill*, 86 Okla. 1, 205 P. 917,.925 (1922); 17 Halbury's Laws of England (1st ed., 1911) Infants §§ 132, 135.

33 *White v. Hart*, 80 U.S. (13 Wall.) 646, 650 (1871).

34 AMERICAN DECLARATION OF INDEPENDENCE; Schwartz, The Bill of Rights, A documentary history. The Declaration states, in relevant part: "We hold these truths to be self-evident, that all men

an "indestructible and perpetual union" in the Preamble, whereas if construed as a fee tail,[35] it would be consistent with an intent to create "unalienable rights" and "a perpetual union,"[36] for the protection of future generations, including the unborn. It was submitted to the People for ratification.[37] Implicit in the Preamble is the concept of social contract[38] wherein society promises the individual inalienable rights, in return for which the individual promises to conform to the laws of the majority which do not derogate[39] from in-

---

are created equal, that they are endowed by their Creator with certain **unalienable** Rights, that among these rights, Government are instituted among Men, deriving their just powers from the consent of the governed, ..." Declaration of Independence, ¶ 2.

[35] *Hertz v. Abrahams*, 110 Ga. 707, 36 S.E. 409 (1900); *Haward v. Howe*, 12 Gray (Mass.) 49 (1858); *Gannon v. Albright*, 183 Mo. 238, 81 S.W. 1162 (1904); *Kay v. Scates*, 37 Pa 31 (1860); *Larew v. Larew*, 146 Va. 134, 135 S.E. 819 (1926). The Constitution expressly concerns estates and interests in lands. See, Art. I, § 8, cl. 17 (District of Columbia; Places purchased); Art. III, § 3, cl. 2 (forfeitures); Art. IV, § 2, cl. 1 (privileges and immunities), § 3, cl. 2 (property belonging to the United States; Amendment III (Quartering of soldiers); Amendment IV (Secure in their persons, houses); Amendment V ("... nor be deprived of ... property without due process of law; nor shall private property be taken for public use without just compensation ....").

[36] 28 American *Jurisprudence* (2nd), Estates, § 53. *Cf., Barber v. Pittsburgh, F.W. & C.R. Co.*, 166 U.S. 83 (1897); *Anderson v. United Realty Co.*, 79 Ohio St. 23, 86 N.E. 644, affmd 222 U.S. 164 (1911) (recognizing by *dictum* that this rule was followed at common law).

[37] 2 Farrand, Max, The Constitutional Debates, pp. 152, 163, 177, 193, 196, 209, 565, 582, 590, 651; Amicus Appendix. 3 Rotunda, op cit., p. 663, note 1.

[38] E.g., Hobb, Leviathan (1651); Locke, Second Treatise of Government (1690); Laqueur, The Human Rights Reader.

[39] Verdross, *Forbidden Treaties int'l Law*, 31 AJIL 571 (1937) ; Verdross, *Jus Dispositivum & Jus Cogens in Int'l Law*, 60 AJIL 55

alienable rights. Mutual promises have always been considered sufficient consideration for enforceability.[40] As persons who have not reached the age of capacity[41] could not consent,[42] it appears that adults are of the class "our selves," and all others of the class "Posterity,"[43] to include lives in being, i.e., the unborn.

Taking the approach that the unborn are members of 'Posterity' answers a number of theoretical problems. First, it is a further development of constitutional theory which recognizes there is not just one right, or more precisely— life, at stake, but two, the mother's, a member of 'Ourselves,' and the Unborn, a member of 'Posterity.' Second, it answers why the State cannot force a woman to terminate pregnancy or engage in eugenics, because the life of the unborn cannot be taken, absent legal justification or excuse. Third, it assures that a women's right to terminate pregnancy is not abridged where to carry to term would be an undue burden, i.e. mother has a right to self-defense where fetal life endangers her life. Fourth, it sets a standard for preserving both lives, if possible, guarding against undue state influence. Finally, it does justice by respecting the Constitutional guarantee to protect human life, removing from the discussion a word, abortion, which is inflammatory, ending, hopefully, the carnage done to women, Posterity, and others.

(1966) ; Verdross, *Forbidden Treaties in International Law*, 31 AJIL 571-577 (1937).

[40] Chitty on Contracts, 134 (23rd ed., 1968); Restatement of Contracts (1st) § 77; *Coggs v. Berherd*, 2 Ed.Raym. 909 (1703) .

[41] "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." § 1, 26th Amendment.

[42] Chitty, op. cit.

[43] 2 Stephens Commentaries 342 (1841).

The point is that an important defense was withdrawn from consideration. Properly charged, a jury could have found that Hill acted with a bona fide good faith belief his acts were necessary for the protection of a life protected by the constitution, and reasonable, therefore not guilty, or unreasonable, and therefore guilty only of voluntary manslaughter. The failure to give the jury a third option is constitutional error. *Beck v. Alabama*, 447 U.S. 627 (1980). Moreover, the Court should not speculate what the jury might have done in a hypothetical case never presented to it, therefore the reversal is automatic and mandatory. *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993).

CONCLUSION

WHEREFORE, *Amicus Curiæ* pray, for all of the reasons and arguments set forth herein, this court grant review, reverse the judgment, and remand for further proceedings not inconsistent with this court's opinion, and such other and further relief as the court deems just and proper under the circumstances.

Dated: June 22, 1997

Respectfully submitted,

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AMICUS CURIÆ THE FRIENDS OF PAUL JENNINGS HILL IN SUPPORT OF APPELLANT

EXCERPTS FROM
2 Farrand, Max, The Constitutional Debates*
[129]

COMMITTEE OF DETAIL, I

***

[Proceedings of the Convention, June 19 -- July 23.]
[152]

COMMITTEE OF DETAIL, IV

*****

VI

We the People of (*and*) the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New. York, New. Jersey, Pennsylvania, Delaware, Maryland, Virginia, North. Carolina, South. Carolina and Georgia do ordain declare and establish the following Constitution for the Government of ourselves and of our Posterity.

1.

*****

[163]

COMMITTEE OF DETAIL, IX

* Pages from Farrand's are indicated at the beginning of the page in [ ]. All punctuation and capitalization is exactly as found in Farrand's which faithfully follows the manuscript originals in Madison's book. All footnotes were omitted unless deemed important to the issues under consideration. The most commonly omitted footnote says "Found among the Wilson Papers and in Wilson's handwriting. Portions in parentheses represent parts crossed out. Italics represent later insertions."

*****

IX

We the People of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare and establish the following Constitution for the Government of ourselves and our Posterity.

1.

*****

[177]

Monday MADISON August 6

MADISON

Monday August 6th. In Convention

<Mr. John Francis Mercer from Maryland took his seat.>

Mr. Rutlidge <delivered in> the Report of the Committee of detail as follows: < a printed copy being at the same time furnished to each member.>

We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

Article I

****

[193]
TUESDAY, AUGUST 7, 1787.
JOURNAL
Tuesday August 7, 1787.

[To refer the report to a Committee of the whole Ayes – 5; noes – 4.

Delaware being represented during the Debate a question was again taken on ye Committee of ye whole Ayes — 3; noes — 6.]

On the question to agree to the Preamble to the constitution as reported from the committee to whom were referred the Proceedings of the Convention – it was passed unan: in the affirmative [Ayes – 10; noes – – 0.]

*****

[196]

Tuesday MADISON August 7

MADISON

Teusday August 7th. In Convention

The Report of the Committee <of detail being> taken up,

***

The <preamble> of the Report was agreed to nem. con. So were Art: I & II.

*****

[209]

Tuesday MADISON August 7

MCHENRY

Augt. 7.

*****

The preamble or caption and the 1. and 2. article passed without debate, ...

*****

[565]

COMMITTEE OF STYLE

Proceedings of Convention Referred to the Committee of Style and Arrangement.

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain, declare and establish the following Constitution for the Government of ourselves and our Posterity.

ARTICLE I.

*****

[590]

COMMITTEE OF STYLE

Report of Committee of Style

WE, the People of the United States, in order to form

a more perfect union, to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

*****

[604]
THURSDAY, SEPTEMBER 13, 1787.
JOURNAL
Thursday September 13, 1787.

****

Resolved that the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the recommendation of it's Legislature; for their asent and ratification. ***

*****

[604]

***

[To postpoine the report respecting the 22nd and 23rd Ayes — 9; noes — 1.]

*****

To strike out the word "to" before establish justice Ayes — 8; bites — 2,]

[641]
MONDAY, SEPTEMBER 17, 1787.
JOURNAL
Monday September 17, 1787.
Detail of Ayes and Noes

The Constitution Unanimously agreed to.	To deliver over the Journal and papers to the

			President
	[567]	[568]	[569]
New Hampshire	aye	aye	aye
Massachusetts	aye	aye	aye
Rhode Island	aye	aye	aye
Connecticut	aye	aye	aye
New York	aye	aye	aye
New Jersey	aye	aye	aye
Pennsylvania	aye	aye	aye
Delaware	aye	aye	aye
Maryland	aye	aye	no
Virginia	aye	aye	aye
North Carolina	aye	aye	aye
South Carolina	aye	dd	aye
Georgia	aye	aye	aye

MADISON

Monday Sepr. 17. 1787. In Convention

The engrossed Constitution being read, ...

Docr. Franklin rose with a speech in hand ....

*****

[643]

... — He then moved that the Constitution be signed ...

[644]

*****

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to by all the States answering ay.

*****

[649]

MCHENRY

Monday Sepr. 1787.

Read the engrossed Constitution. Altered the representation in the house of representatives.

*****

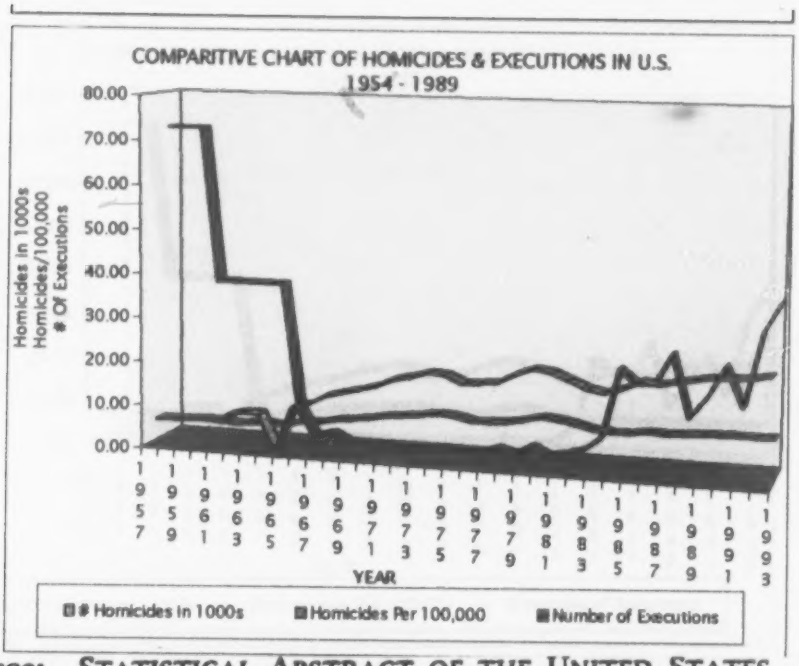
[651]

THE CONSTITUTION OF THE UNITED STATES

We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

*****



Source: STATISTICAL ABSTRACT OF THE UNITED STATES, 1963 (Table 197), 1969 (Table 199), 1976 (Tables 252 & 299), 1986 (Tables 279 & 329), 1996. Total Murders represent number of murders committed in United States. Number per 100,000 represents the number of murders per 100,000 persons in the United States.

(4)

Case No. 96-1957

Supreme Court U.S.
FILED
JUL 24 1997
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1996

PAUL JENNINGS HILL, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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28 pp

QUESTION PRESENTED

The petition for writ of certiorari presents the following question:

> Whether Hill's Sixth and Fourteenth Amendment rights to counsel were violated when the judge knew Hill's only defense on two counts of premeditated murder was the affirmative defense of justification, but failed to inquire if Hill had any knowledge of how to present that justification defense which required extensive, legal research in order to proffer evidence sufficient to establish the factual predicate, by the skillful use of compulsory process, to prove that complex intricate defense, and whether that failure to inquire violated Faretta v. California, 422 U.S. 806 (1978), which requires a waiver of the right to counsel must be "voluntarily and intelligently" made, Id. at 807; "an intelligent and knowing", waiver, Id. at 809; a "knowing and intelligent" waiver, Id. at 812; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. at 814; he must "knowingly and intelligently" waive that right to counsel, Id. at 835, and in addition, the judge failed to follow the more stringent Florida Rule 3.111(d), which requires that:
>
> > (2) a defendant shall not be deemed to have waived the assistance of counsel until . . . a thorough inquiry has been made

> into both the accused's comprehension . . . and . . . capacity to make an intelligent and understanding waiver

and:

> (3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of . . . the nature or complexity of the case . . . [Emphasis added],

particularly where the State filed its motion in limine to preclude the necessity/justification defense on October 14, 1994, which, on October 24, 1994 when set for oral argument, the following occurred within minutes of each other: 1) the State handed its brief to the judge and to Hill in open court, 2) Hill moved for counsel to orally argue to which the State objected, and the judge sustained the State's objection, 3) the State argued its motion which Hill was unable to argue, 4) the judge granted the motion in limine, following which, Hill, at trial, asked no voir dire questions, objected to no voir dire questions asked by the State, waived both of his opening arguments and final closing argument, failed to cross-examine any witnesses, offered no witnesses, failed to offer any exhibits, failed to object to any exhibits, made no requests to charge, took no exceptions to the charge, and finally made a meaningless 67 word comment which resulted in a verdict of

two death sentences against Hill, amount to a violation of Hill's Sixth and Fourteenth Amendment rights?

Respondent, State of Florida, restates this question as follows:

I. Whether this Court, assuming that jurisdiction exists, should grant certiorari to review the decision of the Supreme Court of Florida below, in that the court resolved the claim asserted in regard to self-representation in accordance with this Court's precedents?

II. Whether this Court, assuming that jurisdiction exists, should grant certiorari to review the decision of the Supreme Court of Florida below, in that the court resolved the claim asserted in regard to the defenses of "necessity" or "justification" in accordance with the precedents of this Court, as well as all other courts to consider the matter?

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Case No. 96-1957

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1996

PAUL JENNINGS HILL, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

OPINION BELOW

The opinion below is reported at 688 So.2d 901, and a copy of the opinion is included in the Appendix to the Petition for Writ of Certiorari [Pet. App. at A1-A24a]. Petitioner's counsel has utilized the "Decisions Below" section of the petition (Petition at 2-4), as a vehicle for criticism of the various rulings of the Florida courts. Respondent contends that such is inappropriate, and that all argumentative portions of that section must be disregarded.

JURISDICTION

Petitioner's counsel has likewise utilized this portion of the petition to improperly present argument, and Respondent accepts only the statement that jurisdiction has been sought pursuant to 28 U.S.C. §1257. Further, as will be argued more fully *infra*, Respondent contends that no jurisdiction lies to entertain this petition, in that it has not been authorized by

Petitioner Paul Hill, and Hill's counsel lacks authority or standing to maintain this action in the absence of his client's consent.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's counsel contends that the Sixth and Fourteenth Amendments to the Constitution of the United States are implicated, as is Article I, §16(a) of the Florida Constitution. Hill's counsel likewise maintains that two Florida Statutes, §§776.012, Fla.Stat. (1993), and 924.141(5)(i), Fla.Stat. (1993), are implicated, as is Florida Rule of Criminal Procedure 3.111(d).

STATEMENT OF THE CASE

Respondent cannot accept the Statement of the Case set forth by Hill's counsel (Petition at 7-17), which is argumentative in the extreme and is not a balanced recitation of Hill's litigation below, and the manner in which such was resolved in the state courts. Accordingly, the following is substituted:

(A) Statement Of The Facts

The instant petition does not contain any formal Statement of the Facts. Respondent would set forth the following, from the opinion below:

> Early on the morning of July 29, 1994, Hill went to the Ladies Center in Pensacola, Florida, where he had been protesting against abortion for six months, and waited outside. About one

> hour later, a pick-up truck driven by James Herman Barrett, also containing his wife June Griffith Barrett and Dr. John Bayard Britton, arrived at the Center. The Barretts volunteered at the Center on the last Friday of every month. On those days, they met Dr. Britton at the airport and escorted him to the Ladies Center, which he visited every Friday to perform legal abortions. As the truck entered the parking lot, Hill was standing in the middle of the driveway. He moved to the side, allowing the truck to pass him. As the truck drove by, it came within several feet of Hill, so that he was able to see the truck's occupants.
>
> James Barrett parked the truck near the steps of the Center. As Barrett got out of the truck, Hill shot and killed him. Hill also shot and wounded June Barrett. He then moved closer to the truck before shooting and killing Dr. Britton. Hill was arrested shortly thereafter while walking away from the Center.

Hill, 688 So.2d at 902-3 [Pet. App at A2-A3].

(B) How Any Federal Question Was Raised And Decided Below

(i) The Faretta Point

Paul Hill was indicted on August 9, 1994, on two counts of premeditated murder, one count of attempted murder, and one count of shooting into an occupied vehicle, and the Office of the Public Defender was appointed to represent him.

On September 26, 1994, that office filed a motion to withdraw, contending that Hill had expressed the desire to represent himself, and further requesting that a hearing be held in accordance with Faretta v. California, 422 U.S. 806 (1975). At this time, defense counsel stated that he had advised Hill that the State would be seeking the death penalty, and also affirmatively stated that he did not see any basis to challenge Hill's mental competency or to have him psychiatrically examined (R 25-6).

The formal Faretta hearing commenced the next day. At this time, Hill stated that it was his desire to represent himself, with or without standby counsel (R 48-9). Hill affirmed that he understood that the Assistant Public Defender presently representing him was experienced in capital cases, but stated that representing himself would be in his best interest (R 52-3). Hill reaffirmed that he understood that he faced the death penalty as to the murder charges, as well as a possible life sentence on the charge of attempted murder, and told the court that, while he knew the legal system to be complex, he felt that he "understood enough" (R 55-6). Hill also stated that he understood that there were disadvantages in representing himself, including the fact that he was presently incarcerated, but stated that he felt that he understood enough about the rules of criminal procedure and the rules of substantive law to be able to represent himself (R 56).

The state circuit judge questioned Hill as to his age, marital status, education and health, and also inquired as to any prior instances of self-representation; as to his mental health, Hill averred that he had never suffered from any mental problem and was not currently taking any medication (R 64-5). The state court judge specifically questioned Hill as to his understanding of the fact that he would be held to the same standards as an attorney, should he represent himself, and that

he would likewise be subject to the same statutes and rules (R 72-4. The prosecutor also questioned Hill, and the following exchange took place:

> MR. MURRAY: There's a lot of disadvantages [to self-representation], the Court has gone through kind of a laundry list?
>
> THE DEFENDANT: Yes, sir.
>
> MR. MURRAY: One of those disadvantages might be that you would want to ask a question or to present a defense. Do you understand that if you do not know how to lay a foundation, that is to say, to ask the right series of questions, if I stand up and object and the Court sustains it, that you may be essentially thwarted in your efforts to try to move forward in the particular area? Do you understand that?
>
> THE DEFENDANT: Yes.
>
> MR. MURRAY: Do you understand -- at least I understand, I want to be sure that you do, the trial judge had indicated very clearly to you that he will treat you the same as he does any other lawyer that appears in front of him?
>
> THE DEFENDANT: That's been made clear to me. I understand that.
>
> MR. MURRAY: You recognize that is a substantial disadvantage?
>
> THE DEFENDANT: Yes, I understand that.

[Pet. App. at A120-1].

The prosecutor also asked Hill if he would abide by the court's rulings, insofar as the conduct of the trial was concerned, and when Hill replied in the affirmative, the following took place:

> MR. MURRAY: In the event that you wanted to advance a proposition and there was an objection to that and the Judge sustained it, based upon his legal ruling, do you understand that you would have to abide by that ruling even though you may feel that it conflicts with your views of glorifying God?
>
> THE DEFENDANT: Yeah, I understand that.
>
> MR. MURRAY: Are you willing to do that?
>
> THE DEFENDANT: Yes, I am willing to do that.

[Pet. App. at 135].

The state court judge took the matter under advisement, and, on September 30, 1994, rendered his order expressly finding Hill capable of waiving the right to counsel, and further finding that such waiver had been knowingly and intelligently made; the Office of the Public Defender was appointed "standby" counsel. In pertinent part, the order stated:

> The Defendant has filed through his attorney a motion to represent himself at trial. In determining whether his decision to represent himself is intelligently and knowingly reached,

> the Court has heard testimony from Mr. Hill first as to his present and past health and physical condition, his emotional and mental health, stability, age and education level. This Court need to reach the merits of the reasons upon which Mr. Hill wishes to represent himself. This Court finds the Defendant, Paul Jennings Hill, to be confident, competent, articulate and intelligent, well educated and with appropriate demeanor for the courtroom setting and a more than adequate ability to express himself.
>
> This Court has discussed with Mr. Hill the overwhelming disadvantage of self-representation, and the complexity of the discovery process. Mr. Hill has been advised of his right to private or appointed counsel and asserts that he wishes absolutely to represent himself at the trial proceedings.
>
> Although the Defendant has not previously represented himself in either civil or criminal proceedings, this Court observes that he has the ability to understand legal concepts and the Rules of Criminal Procedure. Mr. Hill advises the Court that should his motion be granted to represent himself, he has available a law library at the Escambia County Jail.

[Pet. App. at A30-1].

On October 13, 1994, the state trial court held a "supplemental" Faretta hearing, noting that in the interim since the last hearing, Hill had represented himself in federal court;

Hill stated that he wished to continue to represent himself, and further stated that he would consult standby counsel for guidance as necessary (R 100-103). At a subsequent hearing on October 24, 1994, Hill again reaffirmed his wish to represent himself *pro se*, and the court inquired again, and received a similar answer, at the commencement of the trial on October 31, 1994 (R 221; T 9-10); at this time, the Assistant Public Defender who had been serving as standby counsel observed that he had not seen anything about Hill's conduct or behavior which would warrant not allowing him to represent himself (T 11). At the beginning of proceedings the next day, the court again inquired as to Hill's intentions, and Hill stated that he wished to represent himself (T 242-4). Although when the penalty phase commenced Hill indicated that he wished certain out-of-state counsel to substitute as his standby counsel (a request which was denied), Hill still affirmed that he wished to represent himself (T 662-71); the court continued to inquire as to Hill's intentions at the commencement of all subsequent sentencing proceedings, with Hill likewise continuing to assert his right to self-representation (R 289-90; 319-20).

On appeal to the Supreme Court of Florida, Hill's appellate counsel specifically contended, *inter alia*, that the trial court had conducted an insufficient inquiry under Faretta and Fla.R.Crim.P. 3.111(d), and had failed to advise Hill of the difficulty and complexity of presenting a defense of justification, *see infra*. The state supreme court rejected such contentions after a detailed analysis. Hill, 688 So.2d at 903-5 [Pet. App. at A5-8]. The court expressly found that the trial judge had "conducted an exhaustive inquiry before concluding that Hill's waiver was valid," making sure "that Hill knew the State would seek the death penalty" and "that Hill understood he would be in jail and therefore unable to prepare as well as counsel could on his behalf." Hill, 688 So.2d at 904 [Pet. App. at A6). The court likewise noted that the judge had

specifically explained to Hill that he should not expect any special help simply because he was representing himself, that he "would be treated the same as an attorney," and the legal system had its own terms of art and procedure that would be unfamiliar to a layperson. The court concluded that Hill "was adequately warned of the dangers and disadvantages of self-representation as required by Faretta." Id.

The court likewise held that the trial court had inquired as to Hill's age, education and experience, as well as his physical and mental health; in a footnote, the court found that any mental health evaluation would have been futile, and stated that the record demonstrated that Hill's mental condition did not effect his ability to make an intelligent and understanding choice to waive his right to counsel. Hill, 688 So.2d at 904, n.1 [Pet. App. at A7]. The court likewise held:

> As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity that would lead us to conclude that Hill was unable to make a fully intelligent and understanding choice to waive counsel under rule 3.111(d). In any event, the prosecutor specifically explained to Hill that he might be thwarted in his efforts to present a defense if he could not properly lay a foundation. Nor does the fact that this is a death penalty case make it so complex that a defendant cannot make an intelligent choice to represent him or herself. It was sufficient that the judge made sure that Hill knew the State would be seeking the death penalty.

Id. [Pet. App. at A7-8].

Citing to this Court's decision in Godinez v. Moran, 509 U.S. 389, 399 (1993), the Florida Supreme Court concluded:

> In sum, we conclude that the inquiry in this case complied with both *Faretta* and rule 3.111(d). We emphasize that a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed pro se. As the Supreme Court stated in *Godinez v. Moran*, 509 U.S. 389, 399, 113 S.Ct. 2680, 2686-87, 125 L.Ed.2d 321 (1993), 'the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.' Thus, the judge was not required to give Hill a lesson on how to try a lawsuit before finding that Hill was making a knowing waiver of his right to counsel. It was enough for Hill to be alerted generally to the difficulties of navigating the legal system, and in this case the inquiry went beyond the minimum requirements to warn Hill of the particular difficulty of laying a predicate for a defense. (Footnote omitted).

Hill, 688 So.2d at 905 [Pet. App. at A8].

In the footnote, the state court expressly found, based upon the record, that the safeguards of Faretta had been extended at every stage in the proceedings. Hill, 688 So.2d at 905, n.2 [Pet. App. at A8-9].

(ii) The "Necessity/Justification" Point

Prior to trial, the State filed a motion in limine to preclude Hill from seeking to raise any defense of "necessity" or "justification," based upon his views on abortion, stating that such defense could not be raised as a defense to the criminal acts which he had committed to prevent constitutionally-protected activities; the prosecution filed a memorandum of law in support of its motion, expressly citing to this Court's decision, United States v. Bailey, 444 U.S. 394 (1979) (R 114-16; 201-07). Hill filed a lengthy motion in opposition to the State's pleading, contending, *inter alia*, that the jury should be allowed to determine not only the facts in controversy, but also the law to be applied (R 117-200). The motion was called up for a hearing on October 24, 1994, and granted on such date. During the course of the trial, Hill stated, when the time came for the presentation of the defense case, that he wished to present the defense "which he had offered to the court earlier." The state trial judge indicated that he would abide by his prior ruling (T 566).

On appeal, Hill's counsel maintained that it had been error for the court to have granted the State's motion, in that Hill was entitled to present his views on abortion in support of the statutory defense of "use of force in defense of person," pursuant to §776.012, Fla.Stat. (1993). While finding no Florida precedent to be specifically on point, the state supreme court found the out-of-state caselaw cited by the State to be persuasive, holding:

> The State cites no Florida appellate court that has ruled on the subject of whether the defense of necessity or justification, whether it be common law or statutory, is available to a defendant whose crime was committed in

opposition to abortion. However, the law outside this state, of which there is a significant body, is virtually unanimous on the subject. (Footnote omitted). In every appellate court found to have considered the issue, the defendants were precluded as a matter of law from asserting necessity or justification as a defense to trespass violations committed in protest of abortion. For example, in *City of Wichita v. Tilson*, 253 Kan. 285, 855 P.2d 911, *cert. denied*, 510 U.S. 976, 114 S.Ct. 468, 126 L.Ed.2d 420 (1993), one of the more recent cases on the subject, the Kansas Supreme Court opined:

> Regardless of what name is attached to the defense (and for the sake of simplicity we will refer to it as the necessity defense) one thing is clear: The harm or evil which a defendant, who asserts the necessity defense, seeks to prevent must be a legal harm or evil as opposed to a moral or ethical belief of the individual defendant.
>
> . . . .
>
> The courts have invoked several different rationales in rejecting application of the defense. The majority of courts reason that because abortion is a lawful, constitutionally protected act, it

> is not a legally recognized harm which can justify illegal conduct.
>
> *Id.* 855 P.2d at 914-16. We agree with *Tilson* and other cases holding that, as a matter of law, legal abortion is not a recognized harm and cannot be used to invoke the necessity defense. *See Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); §390.001, Fla.Stat. (1993). For the same reason, abortion also cannot constitute 'harm' under section 776.012. (Footnote omitted).

Hill, 688 So.2d at 905-06 [Pet. App. at A11-13].

Citing to Commonwealth v. Wall, 372 Pa.Sup. 534, 539 A.2d 1325, appeal denied, 521 Pa. 604, 555 A.2d 114 (1988), the Florida Supreme Court noted that to accept Hill's argument would be tantamount to judicially sanctioning vigilantism, and concluded that denial of Hill's motion in limine had not been error. Hill, 688 So.2d at 906 [Pet. App. at A13-A14].

REASONS FOR DENYING THE WRIT

I. IN THAT JURISDICTION DOES NOT EXIST, THIS COURT SHOULD DISMISS THE INSTANT PETITION FOR WRIT OF CERTIORARI

Before proceeding to the merits of any of the claims asserted in the instant petition, Respondent initially contends that this Court lacks jurisdiction. On June 10, 1997, Paul Hill wrote to this Court and specifically stated that he did not authorize the filing of any petition for writ of certiorari in this

cause, expressly disavowing such; this letter was filed on June 23, 1997, and supplied to the undersigned on June 27, 1997.

Because Paul Hill has not authorized the instant petition, it would appear that his former appellate counsel, who has filed the petition, is seeking to proceed as Hill's "next friend." This Court has previously not afforded standing to an attorney who wishes to pursue relief without his client's consent. See, e.g., Hammett v. Texas, 448 U.S. 725 (1980) (petition for writ of certiorari, filed by petitioner's attorney, dismissed upon request of petitioner himself, where inmate sentenced to death voluntarily waived further relief); Lenhard v. Wolff, 444 U.S. 807 (1979) (application for stay of execution, filed by petitioner's attorney without his consent, denied). There has never been any allegation that Paul Hill is not mentally competent, and it is his right to decide whether or not to petition this Court for certiorari. He has chosen no to do so, and his attorney lacks standing to maintain an action which he has not authorized. Accordingly, the instant petition should be dismissed.

II. ASSUMING THAT JURISDICTION EXISTS, THIS COURT SHOULD DENY CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF FLORIDA BELOW, IN THAT THE COURT RESOLVED THE CLAIM ASSERTED IN REGARD TO SELF-REPRESENTATION IN ACCORDANCE WITH THIS COURT'S PRECEDENTS

Assuming that jurisdiction is perceived, Hill's counsel has nevertheless entirely failed to demonstrate any basis for this Court to review the decision of the Florida Supreme Court. Although opposing counsel proclaims that the state supreme

court "emasculated" this Court's decision, Faretta v. California, 422 U.S. 806 (1975), and that the decision below constitutes "a dramatic, graphic, illegal change in the law," which will be cited for the proposition that waiver of a defendant's Sixth Amendment rights "is a mechanical act" (Petition at 17), the simple truth is that the Florida Supreme Court's opinion in the Hill case is entirely consistent with all this Court's precedents. Further, to the extent that Hill's counsel contends that the decision below is inconsistent with Florida's own Rules of Criminal Procedure (Petition at 17-27), such cannot constitute any basis for this Court's review. See, e.g., Michigan v. Long, 463 U.S. 1032, 1041 (1983); Fisher v. United States, 328 U.S. 463, 476-7 (1946). The instant petition should be denied in all respects.

The primary contention raised by Hill's counsel - that Hill was not sufficiently apprised of the "complexity" of the case, so as to be able to make a knowing and intelligent waiver of counsel - is refuted by the record. As the Florida Supreme Court expressly found, the state trial judge conducted an "exhaustive" inquiry into all relevant matters before accepting Hill's waiver of counsel; this inquiry, and waiver, was repeated at every critical stage in the proceedings. Thus, the court noted that Hill had repeatedly been advised that he faced the death penalty and, further, that he faced a number of disadvantages in representing himself. The state supreme court noted that the prosecutor himself had told Hill that he might be thwarted in his efforts to present a defense if he could not properly lay a foundation. Hill, 688 So.2d at 904 [Pet. App. at A7-8]. The state supreme court was correct in concluding that there was nothing particular complex about the prosecution at hand, and that the state trial judge was not required, under Faretta or Godinez v. Moran, 509 U.S. 389 (1993), to "give Hill a lesson on how to try a lawsuit" before finding that Hill could waive counsel. Hill, 688 So.2d at 905 [Pet. App. at A8]. The

hyperbole of Hill's counsel, to the effect that the opinion below can be read to approve a "mechanical act", has no support in the record or in any of this Court's precedents.

Despite opposing counsel's reliance upon Faretta, his primary complaint would not seem to be so much focused upon the sufficiency of the inquiry conducted, but rather upon the results of the trial. Thus, opposing counsel posits that Faretta was violated because, in his view, Hill was wrongfully precluded from presenting a defense of "necessity/justification," and because Hill's alleged "nonparticipation" in his case "amounted to a plea of guilty." (Petition at 26). As will be argued *infra*, however, Hill's *pro se* status had nothing to do with his lack of success in maintaining a "necessity/justification" defense, in that, such "defense" would not have been recognized by any court of law, under the circumstances of this case, even had an armada of attorneys been present. As to Hill's alleged "nonparticipation" in the case, such was his choice, just as it was his choice to waive counsel. While it is unquestionable that an attorney could have handled the case in a different manner, any such observation rooted in either hindsight or paternalism is not properly the focus of a Faretta analysis, either at trial or on appeal. The record in this case fairly indicates only one conclusion - that Paul Hill knowingly and intelligently waived his right to counsel. The instant petition for writ of certiorari should be denied in all respects.

III. ASSUMING THAT JURISDICTION EXISTS, THIS COURT SHOULD DENY CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF FLORIDA BELOW, IN THAT THE COURT RESOLVED THE CLAIM ASSERTED IN REGARD TO THE DEFENSES OF "NECESSITY" OR "JUSTIFICATION" IN ACCORD WITH THE PRECEDENTS OF THIS COURT, AS WELL AS ALL OTHER COURTS TO CONSIDER THE MATTER

Paul Hill murdered two persons in cold blood, and attempted to kill a third. The victims in this case were a physician who performed abortions, and an elderly couple who volunteered to "escort" those engaged in such activity. In the trial court below, the state moved to preclude Hill from asserting any defense of "necessity" or "justification", under §776.012, Fla.Stat. (1993), allegedly premised upon Hill's views of abortion, and such motion was granted; this ruling was upheld by the Supreme Court of Florida on appeal. Hill, 688 So.2d at 905-6 [Pet. App. at A9-14]. In the instant petition for writ of certiorari, Hill's counsel essentially re-presents the same argument rejected by the state courts, and also sets forth, in a six-page footnote (Petition at 19-25), the alleged predicate steps which would be necessary for the preparation and presentation of such defense.

No valid basis for certiorari has been presented. The Florida Supreme Court surveyed the law nationwide, and concluded, in accordance with all other jurisdictions, that any defense of "necessity" or "justification" was simply inapplicable to offenses of this kind. Hill's counsel presents absolutely no argument to the contrary, and cites to no court which has ever authorized such a defense in regard to crimes

comparable to those committed by Hill. As the Florida Supreme Court recognized, courts throughout the nation have held that legal abortion is not a recognized "harm", see Hill, 688 So.2d at 906 [Pet. App. at A12], and that, hence, Hill did not choose the "lesser" of two evils, when he murdered the instant victims. Likewise, the Florida Supreme Court joined other state courts in finding that to permit a defendant to vindicate his or her criminal activity in such a manner would be an invitation to lawlessness, and "tantamount to judicially sanctioning vigilantism." Id. [Pet. App. at A13]. The Florida Supreme Court's resolution of this matter was entirely consistent with this Court's precedent, United States v. Bailey, 444 U.S. 394 (1979), and the massive discovery discussed by Hill's counsel (Petition at 19-25), would stand no chance of changing this result. It should be noted that, in his federal prosecution, Hill in fact was allowed to call witnesses including the administrator of the abortion clinic, in this case, and the only testimony that was presented at such time was to the effect that all abortions performed at the clinic involved those in the first trimester. See United States v. Hill, 893 F.Supp. 1048, 1049-1050 (N.D. Fla. 1994). Accordingly, no pretense of justification existed.

To the extent that Hill's counsel also attacks Hill's sentences of death, such attack is likewise fruitless. As the Florida Supreme Court expressly recognized, the State's motion in limine was directed only towards the guilt portion of the trial, and no prohibition existed in regard to Hill's ability to present any matters, including his views on abortion, to the sentencing jury at the penalty phase. In fact, Hill did present a closing argument to his sentencing jury, setting forth his views on abortion, and such is quoted in the opinion below. Hill, 688 So.2d at 907 [Pet. App. at A16]. As the state supreme court found, "There is no question that the jury was aware that he killed his victims in order to prevent them from

performing abortions." Id. Hill's views, however, did not preclude the sentencing judge from properly finding that the homicides had been committed in a cold and calculated manner, under §921.141(5)(i), Fla.Stat. (1993), without a pretense of moral or legal justification, and the Florida Supreme Court likewise properly affirmed the finding of this aggravating circumstance, in accordance with its own prior precedent. See Dougan v. State, 595 So.2d 1 (Fla.), cert. denied, 506 U.S. 942 (1992). Id. While it is true that one of the seven justices dissented as to the finding of this aggravating factor, even that jurist did not contend that the death sentences should be vacated as a result, and other aggravation existed to support Hill's two capital sentences. No basis for invocation of this Court's certiorari jurisdiction has been demonstrated, and the instant petition should be denied in all respects.

CONCLUSION

WHEREFORE, for the aforementioned reasons, the instant petition for writ of certiorari should be dismissed and/or denied in all respects.

Respectfully submitted,

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(5)

Supreme Court, U.S.
FILED
AUG 1 1997
CLERK

Case No. 96-1957

In The
Supreme Court of the United States

October Term, 1996

PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY ON MOTION FOR LEAVE TO FILE AMICI CURIÆ BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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8 pp

QUESTIONS PRESENTED BY AMICI

1. Was Hill given faulty Farretta advisements, did not qualify to represent himself, and prejudiced within the meaning of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), by denial of a meaningful access to the courts to provide the following defenses:

> a. Based on exhaustive research on the use of the death penalty, the jury should have been instructed that the death penalty could be applied, if at all, only if the state demonstrated beyond a reasonable doubt that the state could not protect society by mere incarceration.
>
> b. Based on new research, the ruling in *Heath v. Alabama*, 474 U.S. 82 (1985) that dual sovereignty allows multiple punishment is inconsistent with the common law, and therefore Hill was denied an opportunity to show, if there is a basis, the death penalty was barred under the doctrine of double jeopardy.

2. In light of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), was it reasonable for the court below to refuse the defense of the right to use reasonable force, and deadly force if reasonable, in the defense of others, to wit the unborn, where, arguably, the unborn are members of posterity" as used in the Preamble of the Constitution, and therefore a person entitled to a defense?

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Case No. 96-1957

In The Supreme Court of the United States

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PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY ON MOTION FOR LEAVE TO FILE AMICI CURIÆ BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

STATEMENT IN REPLY

Florida filed a response in opposition to The Friends' motion for leave to file an *amici curiæ* brief. The response raises 3 issues: Paul Hill does not want a hearing; *amici* add three issues, whether the state can be precluded from using the death penalty where mere incarceration can protect society, double jeopardy, and whether the unborn are persons in the constitutional sense. Response, p. 1, 2.

Florida claims the first two were never raised below, and therefore should not be permitted to be raised here. Response, p. 2. Florida is confused. What the *Amici* Brief did was support the Farretta Claims of the Petition by showing that there was other and further issues not raised below because of the Farretta error. This Court need not pass on the merits of the theories presented, but can certainly consider in context whether those issues indicate Hill gave a knowing and intelligent waiver, or whether remand to consider

those claims is warranted in light of the record made on the Farretta hearing.

Florida claims the issue of the unborn is an issue not raised below. The claim was clearly raised below. Petition to Appendix (PA), pp. A185-A197. Response, p. 2. Florida also claims the Florida Supreme declined to reach then cites the very portion of the opinion of the court that disposes of the issue. Response, p. 2. The trial court precluded Hill from presenting to the jury any argument on his views that the unborn are persons in the constitutional sense entitled to protection. PA, pp. A229-A230.

Florida also claims that the issue is not expressly mentioned in the petition. Response, p. 2. In fact, it is expressly stated. Petition, p. ii.

ARGUMENT IN REPLY

The court, regardless of who drafted it, liberally construes a pleading. *Hughes v. Rowe*, 449 U.S. 5, 14-16 (1980); *Zenith Radio v. Hazeltine Research*, 401 U.S. 321, 334-35 (1970). The statement of any question presented will be deemed to comprise every subsidiary question fairly included therein. The court will consider questions fairly included in the statement of issues. USSC, R. 14.1(a). In this context, *Farretta error*, whether there was a knowing and intelligent waiver, must be gleaned from the record, and should not necessarily be confined to a litmus test of how defendant responded. In reading the record, this Court should consider subsidiary issues of whether waiver, if any, was valid in light of the record which perhaps ought to have been made had Hill been competent.

Finally, Hill once again asked for stand-by counsel to assist, which was denied. PA, pp. A181-A183, A226-A228. The court simply asked, after denying the request, "Do you wish to still represent yourself?" PA, p. A-185.

Interrogation may continue after an **equivocal request for counsel**, however such questioning must be limited to **attempts to clarify** the request and must not coerce or in-

timidate a person into waiving rights. *Nash v. Estelle* (5th Cir., 1979) (*en banc*) 597 F.2d 513, cert. den. 444 U.S. 981; *United States v. Fouche*, 776 F.2d 1398 (9th Cir., 1985), 1404-05 (Fouche I); *United States v. Fouchel*, 833 F.2d 1284 (9th Cir., 1987) (Fouche II).), *distinguishing Thompson v. Wainwright*, 602 F.2d 768 (5th Cir. 1979) (Agent misrepresentations and prevarications); *United States v. Cherry*, 733 F.2d 1124 (5th Cir., 1984), *cert. den.* 107 S.Ct. 932 (1987) (Continued questioning without contacting officer suspect wanted; no new warnings); *United States v. Porter*, 764 F.2d 1 (1st Cir., 1985) (**Mere rereading of *Miranda* rights after equivocal request insufficient**). Under California law, once a defendant asserts his *Miranda Rights*, **there can be no subsequent relinquishment without counsel**. *People v. Pettingill*, 21 Cal.3d 231 (1978);[1] *Michigan v. Jackson*, 475 U.S. 625 (1986), 636. Based on the foregoing, it does not appear that the trial court met this standard of clarifying. It merely regurgitated the prior warnings.

Paraphrasing by analogy, an opinion of this court, we should not speculate on what the ultimate outcome should have been had the issues been raised, but at what process the defendant in fact got, and if he did not receive the process required for capital punnishment, reversial should be automatic. *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993). Whether the status of the unborn should be considered as part of the Farretta error, or independently, is not relevant. It was raised below and decided, and mentioned in the statement of issues. it should be considered. The *amici curiæ* brief assists the court in making a determination as to whether there is potential merit such that review is warranted.

---

[1] Since Prop. 8, *Pettingill* has been somewhat watered down. Instead of a flat prohibition, it depends upon a totality of the circumstances. *People v. Warner* (1988) 203 Cal.App.3d 1122, 1131; *Michigan v. Mosley*, 423 U.S. 96, 101-104 (1975); *but see People v.* Boyer, 48 Cal.3d 247 (1989), 273, fn. 14.

Secondly, this Court in a long line of cases has held that the defendant in a capital case should be allowed all the help he can get. *Franklin v. Lynaugh*, 487 U.S. 164 (1988); *Hitchcock v. Dugger*, 481 U.S. 393 (1987); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982); *Green v. Georgia*, 442 U.S. 95 (1979); *Lockett v. Ohio*, 438 U.S. 586 (1978); *Hunter v. Florida*, 416 U.S. 943 (1974). Allowing *amici curiæ* at this stage to assure there is full review of the issues is only fair in a capital case.

CONCLUSION

WHEREFORE, *Amici Curiæ* pray, for all of the reasons and arguments set forth herein, this court grant the *amici curiæ* motion for leave to file their brief, grant review, reverse the judgment, and remand for further proceedings not inconsistent with this court's opinion, and such other and further relief as the court deems just and proper under the circumstances.

Dated: July 30, 1997

Respectfully submitted,

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AMICUS CURIÆ THE FRIENDS OF PAUL JENNINGS HILL IN SUPPORT OF APPELLANT

preclude the Defendant from eliciting evidence or testimony in support of a defense of necessity or justification is hereby **GRANTED**.

Done and ordered in open court this 24th day of October, 1994 in Pensacola, Escambia County, Florida.

/s/FRANK L. BELL
FRANK L. BELL
CIRCUIT JUDGE

Conformed Copies to:

James R. Murray, Assistant State Attorney
Earl D. Lovelace, Assistant Public Defender
Paul Jennings Hill, Pro se, Escambia County Jail

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY FLORIDA

STATE OF FLORIDA

Plaintiff,

vs. Case No. 94-3510-J

PAUL JENNINGS HILL,

Defendant.

V E R D I C T

WE, THE JURY, find as follows as to the charges contained in the Indictment:

COUNT ONE (check only one)

XX GUILTY OF FIRST DEGREE MURDER OF DR. JOHN BAYARD BRITTON AS CHARGED IN THE INDICTMENT (check only one of the following):

XX with a firearm
____ without a firearm

____ GUILTY OF SECOND DEGREE MURDER OF DR. JOHN BAYARD BRITTON, A LESSER INCLUDED OFFENSE (check only one of the following):

____ with a firearm
____ without a firearm

_____ GUILTY OF THIRD DEGREE MURDER OF DR. JOHN BAYARD BRITTON. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF MANSLAUGHTER OF DR. JOHN BAYARD BRITTON, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT TWO (check only one)

__XX__ GUILTY OF FIRST DEGREE MURDER OF JAMES HERMAN BARRETT AS CHARGED IN THE INDICTMENT (check only one of the following):

__XX__ with a firearm
_____ without a firearm

_____ GUILTY OF SECOND DEGREE MURDER OF JAMES HERMAN BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF THIRD DEGREE MURDER OF JAMES HERMAN BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF MANSLAUGHTER OF JAMES HERMAN BARRETT, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT THREE (check only one)

__XX__ GUILTY OF ATTEMPTED FIRST DEGREE MURDER OF JUNE GRIFFITH BARRETT AS CHARGED IN THE INDICTMENT (check only one of the following):

__XX__ with a firearm
_____ without a firearm

_____ GUILTY OF ATTEMPTED SECOND DEGREE MURDER OF JUNE GRIFFITH BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF ATTEMPTED VOLUNTARY MANSLAUGHTER OF JUNE GRIFFITH BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF AGGRAVATED BATTERY OF JUNE GRIFFITH BARRETT, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT FOUR (check only one)

__XX__ GUILTY OF SHOOTING INTO AN OCCUPIED VEHICLE AS CHARGED IN THE INDICTMENT

_____ NOT GUILTY

SO SAY WE ALL, this 2 day of November, 1994.

FOREPERSON #552

IN THE CIRCUIT COURT IN
AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. Case Number 94-3510-J

PAUL JENNINGS HILL,

Defendant.

ADVISORY SENTENCE (CHECK ONLY ONE)

__XX__ A MAJORITY OF THE JURY, BY VOTE OF 12-0, ADVISE AND RECOMMEND TO THE COURT THAT IT IMPOSE THE DEATH PENALTY UPON PAUL JENNINGS HILL FOR THE DEATH OF JAMES HERMAN BARRETT.

_____ THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT IT IMPOSE A SENTENCE OF LIFE IMPRISONMENT UPON PAUL JENNINGS HILL WITHOUT POSSIBILITY OF PAROLE FOR THE DEATH OF JAMES HERMAN BARRETT.

DATED THIS THE __3__ DAY OF NOVEMBER, 1994.

FOREPERSON

#552

IN THE CIRCUIT COURT IN
AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA.

Plaintiff,

vs. Case Number 94-3510-J

PAUL JENNINGS HILL,

Defendant.

ADVISORY SENTENCE (CHECK ONLY ONE)

__XX__ A MAJORITY OF THE JURY, BY VOTE OF 12--0 ADVISE AND RECOMMEND TO THE COURT THAT IT IMPOSE THE DEATH PENALTY UPON PAUL JENNINGS HILL FOR THE DEATH OF DR. JOHN BAYARD BRITTON.

_____ THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT IT IMPOSE A SENTENCE OF LIFE IMPRISONMENT UPON PAUL JENNINGS HILL WITHOUT POSSIBILITY OF PAROLE FOR THE DEATH OF DR. JOHN BAYARD BRITTON.

DATED THIS THE __3__ DAY OF NOVEMBER, 1994.

FOREPERSON
#552

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 94-3510-1

PAUL JENNINGS HILL,

Defendant.

==========

SENTENCING ORDER

SUMMARY OF OFFENSES AND EVIDENCE

The location of the crimes was the Ladies Center located on North 9th Avenue in Escambia County, Florida. The business of the Ladies Center concerns abortion issues and abortion procedures. The Defendant had been protesting in front of the Ladies Center for approximately the last six months, prior to the crimes. He would carry signs that said "Execute Abortionists and Accessories".

The murders and other crimes occurred on Friday, July 29, 1994, at

approximately 7:30 A.M. On Wednesday, July 27, 1994, the Defendant bought the shotgun and the ammunition he used in these crimes. On Wednesday, July 27, 1994, and Thursday, July 28, 1994, the Defendant went to a public firing range and practiced with the murder weapon (new shotgun) and used some of the ammunition he had just purchased. The Defendant modified the shotgun by sewing a bandoleer on it with four rounds on the butt of the stock. The Defendant placed bandoleers around each ankle and placed shotgun shells in his pockets. The Defendant loaded the shotgun with shells of the maximum. The Defendant had thirty (30) rounds of ammunition to carry out his plan on July 29, 1994. The ammunition was a combination of twelve (12) gauge buckshot. The Defendant used different grades of buckshot: Double-

Aught buckshot, Number One buckshot and Number Four buckshot. The Defendant also used shot referred to as slugs. On July 29, 1994, the Defendant arrived at the Ladies Center approximately one hour prior to Dr. Britton, Colonel Barrett and June Barrett's arrival.

Colonel Barrett and his wife were clinic escorts and picked up Dr. Britton at the Pensacola Airport that morning to transport him to the Ladies Center. Dr. Britton was wearing, as he always did, a bullet proof vest. Upon entering the Ladies Center, through the only entrance or exit, the truck was driven by Colonel Barrett, and Dr. Britton was in the front passenger seat. Mrs. Barrett was in the back cab seat. The Defendant was at the entrance when the victims arrived. The Defendant had secreted the shotgun in some bushes by the entrance. The truck

on entering the Ladies Center had to pass within three or four feet of the Defendant. The Defendant could easily see into the truck as it passed. As Colonel Barrett was exiting his truck, three shots were fired by the Defendant killing Colonel Barrett. Dr. Britton was hit and Mrs. Barrett was also hit. The three shots were fired from inside the entrance to the Ladies Center. After the three shots, the Defendant moved closer to the truck and reloaded his shotgun. The Defendant after getting closer to the truck also repositioned himself to get a better angle on the occupants of the truck. Dr. Britton and Mrs. Barrett could easily see the Defendant shooting at them. The Defendant fired four more shots at and into the truck and at the victims. Approximately thirty seconds elapsed between the first and second

salvo of shots. During this thirty seconds, the Defendant was reloading the shotgun and repositioning himself to get a better angle on his victims. Dr. Britton asked Mrs. Barrett between salvos if Colonel Barrett had a pistol that day. Colonel Barrett had already fallen dead outside the truck on the driver's side from the first three shots. After the shooting ended, the Defendant stood in the parking lot looking over the bodies. The Defendant threw down the shotgun and exited the Ladies Center and started walking South on 9th Avenue. The Defendant was arrested almost immediately. The Defendant told the police upon being placed in the police cruiser that "There will be no babies killed in that clinic today."

The Defendant was appointed the Public Defender's Office to represent him. The

Defendant requested the Court to allow the Defendant to represent himself. The Defendant after a comprehensive Faretta Hearing, was allowed to represent himself with the Public Defender's Office as "Stand-by Counsel".

The Defendant was charged with two counts of 1st Degree Premeditated Murder, a count of Attempted 1st Degree Murder and a count of Shooting into an Occupied Vehicle.

The trial began October 31, 1994, and the Guilty Phase ended on November 2, 1994. The jury deliberated twenty minutes and found the Defendant guilty of all counts as charged. The same jury reconvened on November 3, 1994, for the Penalty Phase. The jury after deliberating approximately four hours, returned a verdict of 12-0 for the death penalty on both counts of 1st Degree

Premeditated Murder.

A Presentence Investigation was ordered and received. The Defendant would not answer any questions to the investigator preparing the Presentence Investigation.

A Presentence Hearing was held on November 30, 1994, and the State of Florida and the Defendant were given the opportunity to present evidence and arguments of Aggravating and Mitigating factors. The State presented argument, but the Defendant failed to produce any evidence or argument, but did make a general statement on the abortion issue. The Court set final sentencing for this date, December 6, 1994.

This Court, having heard the evidence presented in both the Guilty Phase and the Penalty Phase, and having heard further argument at the presentence Hearing, finds as follows:

COUNT 1: MURDER IN FIRST DEGREE OF DR. JOHN BAYARD BRITTON

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person.

This jury convicted the Defendant of Attempted 1st Degree Murder of June Barrett. This involves violence to a person.

This jury convicted the Defendant of Shooting into an Occupied Vehicle. This felony involved violence to a person under the facts of this case.

This jury convicted the Defendant of 1st Degree Premeditated Murder of James Hermann Barrett. This felony involves violence to a person.

This Aggravating factor was proven beyond a reasonable doubt.

2. The capital felony was especially heinous, atrocious, or cruel.

Dr. Britton as he sat in the truck was able to

observe exactly what was happening. He was able to see the Defendant firing at him. Dr. Britton survived the first salvo of three shots that came into the truck and killed Colonel Barrett. Dr. Britton asked June Barrett, who was in the back seat, "Did Jim bring his gun?" Dr. Britton could see the Defendant stalking across in front of him reloading the shotgun. The Defendant was very close to Dr. Britton. The Defendant was looking at Dr. Britton, and Dr. Britton was looking at the Defendant. Dr. Britton was sitting in the passenger side of the truck. There was twenty to thirty seconds between the two salvos. Dr. Britton had twenty to thirty seconds to anticipate and contemplate his death. Dr. Britton could see the Defendant taking aim and was watching his own execution unfold in front of him. This Aggravating factor was proven beyond a reasonable doubt.

3. The capital felony was a homicide and was committed in a cold, calculated, and

premeditated manner without any pretense of moral or legal justification.

The Defendant had told doctors for the past six months that abortionists should be executed. On July 27, 1994, two days prior to the murder, he begins to put his plan into action. The Defendant buys the shotgun and ammunition. On July 27 and 28, 1994, he practices with the shotgun and ammunition. The Defendant modifies the shotgun by sewing a bandoleer on the stock to hold four rounds. The Defendant puts bandoleers and shells around each ankle. He places other shotgun shells in his pockets. The Defendant loaded the shotgun to the maximum. The Defendant has thirty rounds of 12 gauge buckshot. The Defendant was at the clinic one hour before the victims arrived. After he killed the victims, he stood in the parking lot looking over the bodies. The Defendant was looking at what he had accomplished with pride and satisfaction. This Aggravating factor was proven beyond a reasonable doubt.

The State has asked the Court to find one additional Aggravating Factor:

The Defendant knowingly created a great risk of

death to many people.

It is true there were other persons outside the fence of the Ladies Center. "Great Risk to" is not a mere possibility, but a likelihood or high probability.

While the State certainly has an argument that this Aggravating factor could apply, it cannot be said that it was proven beyond a reasonable doubt. Therefore, the Court neither finds nor has it considered this Aggravating factor.

None of the other Aggravating factors enumerated by statute are applicable to this case and none other are considered by this Court. None except as previously indicated in Paragraph 1-3 above was considered in aggravation.

B. MITIGATING FACTORS

STATUTORY MITIGATING FACTORS

The Defendant has no significant history of prior criminal activity.

The Defendant chose not to present any evidence in this case. The State of Florida did not show the Defendant had significant history of prior criminal

activity. This mitigating circumstance does exist, and the Court gave it substantial weight in the weighing process.

The Defendant presented no evidence or argument as to Statutory Mitigating Factors or Non-Statutory Mitigating Factors.

COUNT 2: MURDER IN FIRST DEGREE OF JAMES HERMAN BARRETT

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

This jury convicted the Defendant of Attempted 1st Degree Murder of June Barrett. This involved violence to a person.

This jury convicted the Defendant of Shooting into an Occupied Vehicle. This felony involved violence to a person under the facts of this case.

This jury convicted the Defendant of 1st Degree Premeditated Murder of Dr. John Bayard Britton. This felony involves violence

to a person.

This Aggravating factor was proven beyond a reasonable doubt.

2. The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

The Defendant had told doctors for the past six months that abortionists should be executed. On July 27, 1994, two days prior to the murder, he begins to put his plan into action. The Defendant buys the shotgun and ammunition. On July 27 and 28, 1994, he practices with the shotgun and ammunition. The Defendant modifies the shotgun by sewing a bandoleer on the stock to hold four rounds. The Defendant puts bandoleers and shells around each ankle. He places other shotgun shells in his pockets. The Defendant loaded the shotgun to the maximum. The Defendant has thirty rounds of 12 gauge buckshot. The Defendant was at the

clinic one hour before the victims arrived. After he killed the victims he stood in the parking lot looking over the bodies. The Defendant was looking at what he had accomplished with pride and satisfaction. This Aggravating factor was proven beyond a reasonable doubt.

The State has asked the Court to find one additional Aggravating Factor:

> The Defendant knowingly created a great risk of death to many people.
>
> It is true there were other persons outside the fence of the Ladies Center. "Great Risk to" is not a mere possibility, but a likelihood or high probability.
>
> While the State certainly has an argument that this Aggravating factor could apply, it cannot be said that it was proven beyond a reasonable doubt. Therefore, the Court neither finds nor has it considered this Aggravating factor.
>
> None of the other Aggravating factors enumerated by statute are applicable to this case and none other are considered by

this Court. None except as previously indicated in Paragraph 1-2 above was considered in aggravation.

B. MITIGATING FACTORS

STATUTORY MITIGATING FACTORS

The Defendant has no significant history of prior criminal activity.

The Defendant chose not to present any evidence in this case. The State of Florida did not show the Defendant had significant history of prior criminal activity. This mitigating circumstance does exist and the Court gave it substantial weight in the weighing process.

The Defendant presented no evidence or argument as to Statutory Mitigating Factors or Non-Statutory Mitigating Factors.

The Court has very carefully considered and weighed the Aggravating and Mitigating circumstances found to exist in this case, being ever mindful that human life is at stake in the balance. The Court finds, as did the

jury, that the Aggravating circumstances present in this case outweigh the Mitigating circumstances presented.

Accordingly it is,

ORDERED AND ADJUDGED that the Defendant, Paul Jennings Hill, is hereby sentenced in Count One to death for the murder of Dr. John Bayard Britton.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Paul Jennings Hill, is hereby sentenced in Count Two to death for the murder of James Herman Barrett. The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count Two, the 1st Degree Premeditated Murder of James Herman Barrett, shall run consecutive to Count One, the 1st Degree Premeditated Murder of Dr. John Bayard Britton.

MAY GOD HAVE MERCY ON YOUR SOUL.

DONE AND ORDERED in Pensacola, Escambia County, Florida this 6th day of December, 1994.

S\FRANK J. BELL
CIRCUIT JUDGE

Copies furnished to:

Jim Murray, Assistant State Attorney
Paul Jennings Hill, Defendant
Public Defender's Office, Stand-by Counsel

IN THE SUPREME COURT OF FLORIDA

PAUL JENNINGS HILL

Appellant

v.

CASE NO. 84,835

STATE OF FLORIDA

Appellee

==========/

MOTION FOR REHEARING

The Appellant, Paul Jennings Hill, through undersigned counsel, asks this Court to grant a rehearing in this case, and as grounds states:

1. On pages 7 and 8 of its opinion, this Court held that the trial court "complied with both Faretta and rule 3.111(d)" and that "...in this case [the

trial court's] inquiry went beyond the minimal requirements to warn Hill of the particular difficulty of laying a predicate for a defense" [Emphasis added], which comments appear inconsistent to this Court's holding on page 6 "As to the notice and complexity of the case, there is nothing particularly complex about the defense of justification or necessity...".

2. In reaching the above decision, this Court may have overlooked or failed to consider the following:

a. Florida Statutes Section 776.012 (1993) defines the defense of justification:

> [a] person...is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent imminent death or great **bodily** harm to himself or another. [Emphasis added]

Therefore, the trial court should have explained to the defendant the factual predicate required in order to present evidence that he reasonably believed justified his actions taken to prevent imminent death or great bodily harm to another. However, because of the intricate factual predicate, he was rendered incapable to produce the scientific evidence that at the moment of fertilization a new human being (person) whose sex is determined at that moment, commences life's journey with DNA which is different from the mother and the father, genes, 46 chromosomes, proteins, enzymes, tissues and organs, which remain the same throughout life even, for example, at age 90 and until the death of that human being.

b. This Court's decision, page 6,

equates the defenses of justification as defined by 776.012 with necessity, despite the difference recognized by this Court when it sets forth, page 8, "Section 776.012 is not identical to the defense of necessity". [Emphasis added]. Therefore, these defenses are not synonymous and require separate foundations. The cases articulated by this Court in its opinion all involve the necessity defense (pp. 6-10), leading, for the first time, this Court to hold "that, as a matter of law, legal abortion is not a recognized harm and cannot be used to invoke the necessity defense" (p. 10, citing Roe v. Wade, 410 U.S. 113, 91 S. Ct. 705, 35 L. Ed. 2d 147 (1973)). The cases cited by this Court involve neither the justification defense nor the Florida statute. It would seem that this

Honorable Court is bound by the Florida statutes and not cases from other jurisdictions which do not deal with the justification defense.

Even a defense that is not a "legal defense" is still permissible to establish the *mens rea* of the accused. In the present case, the defense is a legal defense and should therefore be allowed, if for nothing else, to show the state of mind of this accused.

Moreover, the justification defense as provided by Florida Statute and as applicable to this case is not in conflict with Roe v. Wade. Roe is a restraint on the states via the Fourteen Amendment, not on individuals. This Court is not bound by any United States Supreme Court decree concerning when human life begins, because the U.S.

Supreme Court has explicitly left that question unanswered. Roe, 410 U.S. at 159.

c. The Appellant asserts that had he been properly apprised of his rights pursuant to Faretta and rule 3.111(d) he would not have waived his right to counsel. Neither the cases of Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1978) (grand theft) (cited at p.2 of this Court's opinion) nor Godinez v. Moran, 509 U.S. 389, 399, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993) (at p. 7) (shooting bartender, patron, former wife, and himself, with a plea of guilty), apply here as they are straightforward, simple legal issues. In contrast, the instant case involved the need for extensive, intricate preparation in order to present the complex predicate

necessary to support the justification defense, as defined by 776.012. Also, the Appellant stated his need for counsel four times, indicating his waiver was invalid. [Exhibits A, B, C, and D]. He had no intention to, nor would he, waive that defense, which, was the effect of his invalid "waiver" of counsel, as shown below. Lastly, counsel was required on appeal [Exhibit E]:

> However, this is the direct appeal of a capital case. The Court is concerned that it cannot properly carry out its statutory responsibility to review Hill's conviction and sentence of death without the skilled adversarial assistance of a lawyer acting on Hill's behalf, particularly as it concerns the sufficiency of the evidence to convict and the proportionality of the death sentence.

which further indicates that Faretta and rule 3.111(d) were not satisfied below because in addition to the same legal

issues present on appeal which necessarily were present below, the intricate factual issues doubled the requirement of counsel.

d. This Court, respectfully, may have overlooked or failed to consider that its holding, for the first time, set forth in this case was not the law when the Appellant was tried. It is an axiomatic principle of law that any narrowing construction the Court would place on a statute providing an affirmative defense, must be done prospectively--not retroactively. However, the holding amounts to a retroactive application of the Court's first-time ruling on the application of the necessity defense. Again, respectfully, the holding as set forth concerning the necessity defense does not

apply to the justification defense which is at the issue in this case, and additionally such a holding pursuant to Art. 1 § 10 of the U.S. Constitution and Marks v. U.S., 430 U.S. 188, 191-2 (1976), which applies the ex post facto clause [a limitation upon the power of the government to act against individuals] to the Supreme Court because "that right is protected against judicial action by the Due Process Clause of the Fifth Amendment." Therefore this Honorable Court is barred by the Due Process Clause from holding in this case that section 776.012 prohibits the justification defense. This Honorable Court, respectfully, is requested to overrule State v. Thompson, 413 So. 2d 757, 758 (1982).

e. The trial court's failure to

comply with rule 3.111(d) and Faretta prevented the Appellant the opportunity to offer any evidence in support of the justification defense. This is not a case in which the defendant wanted to and did plead guilty, as in Godinez. It is a case where the defendant wanted to offer evidence of the justification defense, but because of an inadequate Faretta and rule 3.111(d) inquiry, he was denied such an opportunity. He simply did not know, as an experienced lawyer did not know in U.S. v. Harrison, 674 F. 2d 185 (3rd Cir. 1982)(lawyer appearing pro se in tax fraud case held not to waive right to counsel as he could not adequately mount a defense), what he in fact was waiving, as he could not waive that which he did not know.

Rules 3.111 (d)(2)-(3)

state:

> A defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into both the accused's comprehension and understanding waiver. [Emphasis added].
>
> No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of the nature or complexity of the case...[Emphasis added].

Rules 3.111(d)(2)-(3) were violated because there was an inadequate and deficient inquiry into the Appellant's comprehension and understanding of the "particular difficulty of laying a predicate" (p. 7-8) in this case for the justification defense, and therefore the waiver should not have been accepted because he did not make an intelligent and understanding choice based upon the nature and complexity of the case as

mandated by rules 3.111(d)(2)-(3). Further, Faretta at 820, n. 15, admonished that the power to waive the right to the assistance of counsel does not arise mechanically. The benefit of counsel must "knowingly and intelligently" be waived by the defendant. Id. at 836.

Clearly, the Appellant in the instant case did not make an "knowing and intelligent" waiver of his right to the assistance of counsel when his only defense was the justification defense which only could have been presented by an attorney because the factual predicate for the defense minimally required him to conduct an intensive fact based investigation and discovery utilizing intricate legal process, as hereinafter more fully set forth. As the Supreme

Court also held in Godinez--and this Court cited in page 7 of its opinion--the defendant must demonstrate his competence to 'waive the right,, not the competence to represent himself." Paul Hill did not validly waive his right to counsel because he did not know what he was waiving.

Faretta, page 819, addresses that issue of compulsory process and the right to put on a defense. "...[T]he right in an adversary criminal trial to make a defense as we know it", in accordance with both Faretta and the more elaborate standard as set forth by rule 3.111(d), Godinez, supra, at a minimum, required the trial court explain to the Appellant, in the "particular difficulty of laying a predicate for a defense" (p. 7, 8); He had to understand the nature of the

predicate needed to introduce evidence of the justification defense. [For example, laying the predicate may have necessitated: subpoena the records on July 29, 1994; determine if any person, as a result of what happened on July 29, changed her mind concerning the termination of life and a person remains alive as of this day; subpoena the records of the Center to determine whether or not broken appointments were the result of people being dissuaded from terminating a life; subpoena duces tecum those records to Court, if helpful; subpoena the records of the Center to determine if validly licensed; file discovery against the Center to ascertain all the names, addresses and phone numbers of employees for the past prior one year, including those who take part

in the actual termination proceeding; interview each such person as to the responsibilities connected with employment; determine from said persons any other fact witnesses; subpoena those persons; subpoena records keeper as to personnel in any way connected with abortion procedure; interview those people, determine if any illegal abortions took place; take a statement from favorable persons; prepare subpoena duces tecum for said persons; file discovery as to the persons who avail themselves of the services at the Center; interview those persons; subpoena those persons if testimony germane; interview, take statements from and subpoena scientific/secular experts concerning the commencement of a human being].

f. This Court's ruling on page 14 of

its opinion "the trial judge properly rejected the proposition that...Hill acted under a pretense of moral justification", is, respectfully, in error, particularly in view of the clear reading of section 776.012 Florida Statutes (1993):

> However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary <u>to prevent imminent death or great bodily harm to himself or another...</u> [Emphasis added]

and when contrasted with the opinion of the Honorable Harry Anstead in which that issue is studiously addressed. The statute permits the Appellant in the instant case to produce evidence before the trier to attempt to prove that he was acting in the defense of "another".

g. This Court has also concluded,

page 10, that "legal" abortions cannot constitute a "harm". Respectfully, "harm" as used by this Court in citing Wichita v. Tilson, 855 P.2d 911, a necessity case, refers to a person acting in an attempt to prevent some greater, general "harm" to society. For this reason, Wichita v. Tilson defines "harm" for use of the necessity defense as a "legal harm or evil as opposed to a moral or ethical belief of the individual defendant." However, the justification defense, section 776.012, plainly states that a person is justified to prevent great bodily harm to another. Therefore, the Appellant should have been permitted to present all evidence supporting that he "reasonably believed" that his action was "necessary to prevent imminent death or great bodily harm to...another." The

statute and Gilbert v. Florida, 487 So. 2d 1185 (Fla. App. 4th Dist. 1986), permit the defense of justification if evidence was introduced to satisfy the factual predicate to support that defense. Further, the defendant, because he was not permitted counsel, was not able to ascertain if, in fact, the abortions to be performed at the facility were or were not "legal".

h. This Court may have misstated (p. 2, 4), that the Appellant "reloaded his gun" (Exhibit F) before shooting and killing Dr. Britton, as respectfully, there is no evidence for that finding.

i. The Court may have erred at Page 13, note 7, in holding that the motion in limine was directed only toward the guilt phase of the trial, not the penalty stage of the trial. Respectfully, record on

appeal, pages 114, 115 and 116 (Exhibit G) indicates that the motion involved the entire trial as shown by transcript pages 649, 720-725, (Exhibit H) which preclusion involved both aspects of the trial, and, the motion in limine emphasized the exclusion of "political and religious views" (Exhibit G).

j. The Court may have erred, (p. 12) when it states "The argument that the jury was permitted to see certain exhibits not in evidence is not supported by the record", transcript p. 497, 498, 505, 630-635, when the trial judge stated the mannequins were still in Court and not exhibits, and, the Court may not have considered, (p. 12) that a pro se defendant is incapable of the requirement of setting forth objections.

WHEREFORE, for the reasons presented, Paul Jennings Hill asks this Court to grant rehearing in this case.

RESPECTFULLY SUBMITTED,

/S/

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No. 0848300 Florida Bar

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY FLORIDA

STATE OF FLORIDA,

vs. CASE NO. 94-3510

PAUL JENNINGS HILL,

Defendant.

---/

Proceedings held in the above-styled cause before the Honorable Frank L. Bell, Circuit Judge, on the 30th day of November 1994, at the M.C. Blanchard Judiciar Building, 190 Governmental Center, Pensacola, Florida.

APPEARANCES:

FOR THE STATE: JAMES R. MURRAY, ESQUIRE
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32501

RAYMOND L. MARKY, ESQUIRE
Assistant State Attorney
301 South Monroe Street

Tallahassee, Florida 32399

FOR THE DEFENDANT: MR. PAUL J. HILL
Pro se

AS STANDBY COUNSEL: J. PETER FRANCE, ESQUIRE
Assistant Public Defender
190 Governmental Center
Pensacola, Florida 32501

BRENDA F. SANSOM, RPR-CM, CMRS
CIRCUIT COURT REPORTER

PROCEEDINGS

THE COURT: Mr. Murray.

MR. MURRAY: Good afternoon, Your Honor. Is the Court ready for the State to proceed?

THE COURT: Sure. Mr. Hill, are you ready to proceed?

MR. HILL: Your Honor, I have a motion to return personal property. During the arrest and subsequent investigation, there were several items seized that were unrelated to the prosecution or any criminal activity, and I would like to request that those items be returned. Namely, it was a personal computer and monitor and some related items as well as a couple of cassette tapes that operate an answering machine.

THE COURT: Were these taken during a search warrant or something?

MR. MURRAY: That's correct, Your Honor. Also the State has not been served notice of a motion, we have not had a copy of a motion. It's out of order at this time.

THE COURT: All right. That's fine, but

let me try to kind of get to the heart of it.
Have you filed a written motion on it, sir?
MR. HILL: No, sir, I was told that

wouldn't be necessary.
2 THE COURT: Well, what I would like for you
3 to do so everybody will be -- it might not be a
4 problem.
5 MR. HILL: Yes, sir.
6 THE COURT: I don't know. What I suggest
7 you do, sir, if you'll file a written motion
8 requesting return of that property because it's no
9 longer relevant to the prosecution, it wasn~t
10 introduced into evidence, it's personal property
11 that was taken ever when it was taken and serve a
12 copy of it on the State, the State can then say we
13 object to it or we don t object. If there's no
14 objection, there's no problem. If there's an
15 objection, what I can do is then set it for a
16 hearing. I'll be happy to hear what you have got
17 to say on it. I'll be happy to hear what the
18 State has got to say on it. I ll make a decision.
19 MR. HILL: Thank you, sir.
20 THE COURT: Okay. Is the State ready to
21 proceed with this presentencing

hearing?
22 MR. MURRAY: Yes, Your Honor.
23 THE COURT: Mr. Hill, are you ready to
24 proceed?
25 MR. HILL: Yes, sir.

THE COURT: What do you want to proceed on first?

MR. MURRAY: Your Honor, at this time we would move the Court to go ahead and make the Faretta inquiry of the defendant since it's a critical stage.

THE COURT: Right. What I would like to do at this point, Mr. Hill, it's the same thing that we did prior to trial, the same thing that we did I think every day during the trial, is prior to trial we had a fairly long dialogue concerning you wanting to represent yourself in this particular case. I asked you a lot of questions, you responded to the questions -- you responded to the questions, most of them anyway, and based upon your responses I made a ruling that under the Constitution of the United States that you had a right to represent yourself as the United States Supreme Court has issued its ruling and in the case of Faretta, it's called a Faretta case

it's called a Faretta hearing.
During the trial I also asked you if you still wanted to represent yourself, if your answers would be the same if I asked you each and every one of those questions that I asked you at

Faretta hearing. You told me that your answers would be the same and you still wanted to represent yourself. Again, I'm going to make that same inquiry and ask you -- do you remember the questions, all the questions basically that I asked you during the Faretta hearing?

MR. HILL: Yes, sir, in essence.

THE COURT: Would your responses be the same if I were to ask those questions over again?

MR. HILL: Essentially, yes, sir.

THE COURT: Is it still your desire to represent yourself in this matter rather than have an attorney represent you?

MR. HILL: It is.

THE COURT: Is the State ready to go forward?

MR. MARKY: The State is ready, Your Honor.

THE COURT: Okay. Is the State going to present any evidence or just present argument?

MR. MARKY: The only thing that the State would like to move in for the record, and I assume

it has been so moved, is the presentence investigation report itself.

THE COURT: Yes, the presentence

IN THE CIRCUIT COURT

IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO. 94-3510

PAUL JENNINGS HILL,
Defendant.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ /

Proceedings held in the above-styled cause before the Honorable Frank L. Bell, Circuit Judge, on the 6th day of December 1994, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida.

APPEARANCES:

FOR THE STATE: JAMES R. MURRAY, ESQUIRE
Assistant State Attorney
190 Governmental Center

Pensacola, Florida 32501

FOR THE DEFENDANT: MR. PAUL J. HILL
Pro se

ALSO PRESENT: EARL D. LOVELESS, ESQUIRE
J. PETER FRANCE, ESQUIRE
Assistant Public Defenders
190 Governmental Center
Pensacola, Florida 32501

EMILY C. UNDERWOOD, RPR
CIRCUIT COURT REPORTER

P R O C E E D I N G S

THE COURT: Okay. The State has handed up a -- looks like a sentencing -- sentencing guideline score sheet as it relates to the -- the attempted first degree murder and also as it relates to shooting into an occupied vehicle. You have received a copy of that, Mr. Hill?

MR. HILL: I was handed one a few seconds ago, sir.

THE COURT: Do you want to have an opportunity to go over the guideline scoresheet with your standby counsel?

MR. HILL: Not necessarily.

THE COURT: Okay. Well, it looks like this has been prepared, and it comes down to a total of 156 points, 156.6 points. And under the guidelines as -- not the two first degree murder counts, but under the guidelines if the -- if the total points are greater than 52, then there must be a state prison sentence. 156.6 points under the sentencing guidelines, you then take away 28

22points and it comes to a state prison sentence in
23months of 128.6 months. From that you then either
24increase it or decrease it by 25 percent, which
25means that the recommended sentence on the two

counts, which is the attempted first degree murder and the shooting into an occupied vehicle, the minimum state prison sentence in months would be 496.45. The maximum state prison sentence in months would be 160.75 months. Is that the State's understanding?

MR. MURRAY: That is correct, Your Honor.

THE COURT: I would ask you, Mr. Hill, if you agree or disagree with the accuracy of the scoresheet?

MR. HILL: Obvioulsy I can't comment because I have just been handed it a few seconds ago.

THE COURT: Sir, I will give you as much time as you need to go over the scoresheet with your standby counsel who deals with these scoresheets every day. I will give you a chance to go over it with him to see whether or not you feel that the scoresheet is accurate, because we do want it to be accurate.

MR. HILL: Right. Well, I can just ask

them if they think it is accurate. Just give me a moment.

THE COURT: Sir, I will give you as much time as you need to discuss it with them.

(Discussion among Mr. Hill, Mr. Loveless and Mr. France off the record.)

MR. HILL: Yes, sir. My counsel tells me that they believe it is accurate.

THE COURT: Okay. All right. Do you believe that it is accurate based upon their representation to you?

MR. HILL: Yes, sir.

THE COURT: The State has also handed up a -- two civil restitution lien orders, one concerns the estate of Dr. John Britton and the other concerns June Barrett as the -- as the victim. What does the State want to say on that?

MR. MURRAY: Judge, I had these prepared because of the statutory requirement based on the recent legislative enactments, and I'm simply providing it to the Court and to Mr. Hill in the event the Court feels that it needs to enter the order pursuant to the statute.

THE COURT: Have you had a chance, Mr. Hill, to look at those two civil restitution lien

22orders? I assume you got a copy of them.
23 MR. HILL: No, sir, I have not. I was
24handed one a few seconds ago or perhaps two
25minu es ago.I have not had a chance to look at

them.
THE COURT: Again I will give you the same
opportunity. If you would like to confer with
your attorneys about those, I will be -- give you
the necessary time to do that. If you would like
to do it.
MR. **HILL:** All right. Yes, sir.
(Discussion among Mr. Hill, Mr. Loveless
and Mr. France off the record.)
MR. HILL: Well, Your Honor, my counsel
here believes there is an inaccuracy in this
order, as well they believe it's
unconstitutional, but they are also -- being an
inaccuracy as well.
THE COURT: Let me ask you this and let's
go back and kind of revisit the Faretta hearing
that we had initially several months ago in this
case. Whenever you asked to represent yourself,
we had a -- a separate hearing in which you were
asked many questions about your desire to
represent yourself, and you responded to those
questions. And after that hearing was held, an
order was entered allowing you to

represent
yourself and, of course, under our
criminal Rules
of procedure, we are obligated at each
and every

proceeding after that to make sure that you wish to continue to represent yourself or whether or not you want counsel to represent you.

During the course of the trial I continued to do that, and this is another proceeding today, and I would ask you if I were to ask you those same questions again, would generally speaking would your responses be the same?

MR. HILL: Yes, sir.

THE COURT: Do you want to continue to represent yourself in this matter?

MR. HILL: That is correct.

THE COURT: What does the State want to say in relation to Mr. Hill's response on the restitution lien orders?

MR. MURRAY: Judge, I don't know what his objection is or what the claimed inaccuracy is.

THE COURT: I think one of the claims that I heard him state -- he did not make a claim, he did not say as to the inaccuracies. He said based upon what advice he had just received from his attorneys, that he questions the constitutionality

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Paul Jennings HILL, Appellant,
v.
STATE of Florida, Appellee.
No. 84,838
Supreme Court of Florida
June 22, 1995.

Paul Jennings Hill, pro se, Starke FL; and Nancy A. Daniels, Public Defender and W.C. McLaine, Assistant Public Defender, Second Judicial Circuit, Tallahassee, FL, for Appellant
Robert A. Butterworth, Attorney General; and Carolyn Snurkowski and Richard B. Martell, Assistant Attorneys General, Tallahassee, FL, for Appellee

PER CURIAM.
*1 Appellant Paul Jennings Hill was charged with first-degree murder in Escambia County. Upon his motion, Hill was permitted to represent himself at the trial, together with standby counsel. Hill was convicted and sentenced to death. His appeal is now pending in this Court, and he is represented by the public defender. Hill has now moved for leave to represent himself on appeal and to discharge the public defender's office as appellate counsel. We have jurisdiction under article V, section 3(b)(1) of the Florida Constitution. Pursuant to our directive, the Honorable Elzie S. Sanders, Circuit Judge of the

Eighth Judicial Circuit of Florida, conducted a hearing on Hill's motion. Judge Sanders found that Hill comprehends his constitutional right to assistance of counsel in the appeal process and has knowingly and voluntarily waived his right to assistance of counsel in the appeal. Judge Sanders recommended that Hill be permitted to represent himself but that the public defender continue in the case as "next friend of the court."

The principle of Faretta V. California, 422 U.S. 806, 95 S.Ct. 2525, 46 L.Ed.2d 562 (1975), concerning self-representation is not applicable to appeals. Indeed, the Faretta court cited with approval Price v. Johnson, 334 U.S. 266, 68 S.Ct. 1049, 82 L.Ed. 1356 (1948). Faretta, 422 U.S. at 816. In Price, the United States Supreme Court stated:

The discretionary nature of the power in question grows out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. The absence of that right is in sharp contrast to his constitutional prerogative of being present in person at each significant stage of a felony prosecution and to his recognized privilege of conducting his own defense at the trial.

334 U.S. at 284 (citation and footnote omitted).

The transcript of the hearing clearly supports Judge Sanders' findings with respect to Hill's competency and knowing and voluntary waiver of assistance of counsel. However, this is the direct

appeal of a capital case. The Court is concerned that it cannot properly carry out its statutory responsibility to review Hill's conviction and sentence of death without the skilled adversarial assistance of a lawyer acting on Hill's behalf, particularly as it concerns the

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sufficiency of the evidence to convict and the proportionality of the death sentence. As this Court stated in Klokoo v. State, 589 So.2d 219 (Fla. 1991), when the defendant moved to dismiss the appeal from his death sentence.

[C]ounsel for the appellant is hereby advised that in order for the appellant to receive a meaningful appeal, the Court must have the benefit of an adversary proceeding with diligent appellate advocacy addressed to both the judgment and the sentence.

Accordingly, counsel for the appellant is directed to proceed to prosecute the appeal in a genuinely adversary manner, providing diligent advocacy of appellant's interests. The foregoing rulings are made without prejudice to the right of appellant to request leave to file a pro se supplemental brief setting forth his personal positions and interest with regard to the subject matter of this appeal.

*2 Id. at 221-22 (quoting order on motion

to dismiss appeal). Thus, we deny Hill's motion. Because this is a capital case, we will permit Hill to file a pro se supplemental brief on or before the time within which his attorney's brief shall be filed.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

END OF DOCUMENT

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THE COURT: You do have access to other officers of the court, practicing attorneys from other jurisdictions as well as the state of Florida? Are there any in the state of Florida?

MR. HILL: Yes, I have access to lawyers in Florida.

THE COURT: You know, the location is not important, but you do routinely -- or you have access to other attorneys that could counsel with you and advise you or address certain questions that you have in reference to the appellate process?

MR. HILL: That's correct, sir.

THE COURT: What I'm going to do is give Mr. Martell the opportunity to address any questions that he might have, so that we can properly establish the record, so that the Florida Supreme Court

[Handwritten]
If jury recommends "Life Imprisonment With Out Parole", does the law allow in future years the defendant can be paroled?

MOTION FILED
JUN 2 5 1997

(3)

Case No. 96-1957

In The
Supreme Court of the United States

October Term, 1996

PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

MOTION FOR LEAVE TO FILE AMICUS CURIÆ BRIEF, AND BRIEF OF AMICI CURIÆ THE FRIENDS OF PAUL JENNINGS HILL IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI With Appendix

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33 pp

QUESTIONS PRESENTED BY AMICI

1. Was Hill given faulty Farretta advisements, did not qualify to represent himself, and prejudiced within the meaning of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), by denial of a meaningful access to the courts to provide the following defenses:

   a. Based on exhaustive research on the use of the death penalty, the jury should have been instructed that the death penalty could be applied, if at all, only if the state demonstrated beyond a reasonable doubt that the state could not protect society by mere incarceration.

   b. Based on new research, the ruling in *Heath v. Alabama*, 474 U.S. 82 (1985) that dual sovereignty allows multiple punishment is inconsistent with the common law, and therefore Hill was denied an opportunity to show, if there is a basis, the death penalty was barred under the doctrine of double jeopardy.

2. In light of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), was it reasonable for the court below to refuse the defense of the right to use reasonable force, and deadly force if reasonable, in the defense of others, to wit the unborn, where, arguably, the unborn are members of posterity" as used in the Preamble of the Constitution, and therefore a person entitled to a defense?

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No. 96-1957

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In The

Supreme Court Of The United States

October Term, 1996

PAUL JENNINGS HILL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF FLORIDA

PETITIONER'S REPLY TO BRIEF OF RESPONDENT IN OPPOSITION

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CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF FLORIDA

PETITIONER'S REPLY TO BRIEF OF RESPONDENT
IN OPPOSITION

STATEMENT IN REPLY

I. THE FARETTA ISSUE

Florida's brief in opposition to Hill's petition for a writ of certiorari raises five issues, four of which seek to overcome Hill's assertion that the violations of Faretta v. California, 422 U.S. 806 (1975), require that Hill's petition be granted. Faretta sets forth the standard for waiving counsel as "an intelligent and knowing" waiver, 809; one must "competently and intelligently waive" 814; the waiver cannot be a "mechanical exercise" 815-816; and, as applied to Florida rule §3.111(D), prohibits a waiver "unless a thorough inquiry be made into both the accused's comprehension and understanding", and "no waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of the... nature and complexity of the case". The Faretta standard has been breached.

Hill printed the entire Faretta transcript in his appendix, A34-A200i, A207-A225, and A278-A298, yet in its opposition, Florida only quotes a dialogue between the state's attorney and Hill, which does not satisfy Faretta. As the State's Attorney announced he would be seeking the death penalty for Hill, it

is not reasonable to expect Hill to believe his adversary when that same state's attorney illegally told the jury that the jury only applied the facts to the law and the jury did not impose the death sentence when the state's attorney said, (TR 65):

> ..it is the judge's decision to impose the decision of guilt or the decision of punishment. That is the judge's decision. It is not the jury's decision [Emphasis added].

When Florida quotes only the state's attorney and not the trial judge, it judicially admits that the Faretta inquiry by the judge was inadequate, as the record is devoid of a valid Faretta compliance by the trial judge.

Certain court inquiries illustrate the Faretta deficiencies, as shown in the Appendix, A61-A73 and A125-126. Hill acknowledges that the public defenders were competent, but he declined to use them because of the justification defense issue. In response to the Court's questions, A64-65, Hill does not respond in any degree of specificity to satisfy Faretta because his response in essence is that he wants to act in a manner that is pleasing to God. A66 through A73 illustrates, in detail, that there is no valid waiver.

In particular, A73, in response to the court's question "Do you think you understand the legal process and the legal system?" Hill responded: "No, sir, I don't make any pretense of understanding American Jurisprudence."

Again, in response to the prosecutor's questions as to whether or not he would like to have another lawyer, other than

the public defenders, Hill's answer was: "It's entirely possible." (A125-126).

That indicates that Hill did not want to, indeed could not, proceed Pro Se, and he needed a lawyer who would present the justification defense. Again, A196-A197, when the trial court prohibited Attorney Heuser from taking part in the argument to preclude the justification defense, in response to the Court's inquiry as to whether Hill would like to address the Court, Hill stated: "No, sir. Since you disallowed the attorney to speak for me, I'll just let my brief speak for itself."

Again, there is no waiver of counsel to satisfy Faretta and, tragically, before the penalty phase of the proceedings, Record 661-672, Hill again articulates, in regard to the problem he had with the public defenders, Record 662-2:

> However, they just philosophically and theologically just don't agree with me. And I would like to have some standby counsel that does agree with me so that --I realize the phase we are about to enter into is a very important phase..if it's possible, I would ask this Court to at least consider the credentials of these men whom I'm suggesting without any burden on the Court could come and serve as my standby counsel, Mr. Vincent Heuser and Mr. Michael Hirsh.

It's clear through the entire transcript that Hill did not make a valid Faretta waiver. As shown by Hill's Appendix at page 292, handing Hill a scoresheet at the commencement of the penalty phase manifests the injustice. Lastly, Record 672, L12-15, Hill articulates why the

case went the way it did:

> Well, Your Honor, it's my desire given my opinion of this Court, it's my desire to participate in as little as possible in these proceedings. So I wouldn't be culpable in them.

Obviously, what Hill wanted to do, he was not permitted to do. He wanted Attorney Heuser to represent him as proven, A179-183, when Hill requested that Attorney Heuser, who authored the brief in support of the justification defense, be permitted to represent him; the state objected; and the trial court sustained the objection on the grounds that Attorney Heuser was from out of state. A181-183. So too, Attorney Heuser's motion to represent Hill, Pro Hac Vice, A226-228, was objected to by the state, and the motion was denied by the court. A183. Respectfully, these exchanges prove Hill could not proceed Pro Se, and therefore his "waiver" not only did not satisfy Faretta, but Hill stated on the record that he wanted a lawyer.

The Florida Supreme Court admitted that Hill should not have been permitted to conduct the trial Pro Se. It ordered Judge Elzie Sanders to conduct a Faretta hearing to ascertain if Hill had the ability to process the appeal Pro Se, and Judge Sanders approved, which the trial court did not, out of state counsel, when Judge Sanders stated, in response to the out of state issue, A303:

> You know, the location is not important, but do you routinely--or you have access to other attorneys that could counsel with you and advise

you or address certain questions that you have in reference to the appellate process? [Emphasis added]

The Florida Supreme Court acknowledged that Hill required an attorney when it ruled, A301-302:

> Counsel for the appellant is hereby advised that in order for the appellant to receive a meaningful appeal, the Court must have the benefit of an adversary proceeding with diligent appellant advocacy addressed to both the judgment and the sentence.
>
> Accordingly, counsel for the appellant is directed to proceed to prosecute the appeal in a genuinely adversary manner, providing diligent advocacy of the appellant's interest. The foregoing rulings are made without prejudice to the right of the appellant to request leave to follow a Pro Se supplemental brief setting forth his personal positions and interest in regard to the subject matter of this appeal... Thus we deny Hill's motion [to appeal Pro Se]. Because this is a capital case, we will permit Hill to file a Pro Se supplemental brief on or before the time within which his attorney's brief shall be filed.
> It is so ordered.

That comment by the Florida Supreme Court admits that Faretta was violated. Respectfully, if Hill needed a lawyer on the appeal, he most certainly needed a lawyer, and Faretta required a lawyer during the trial of the case.

That is further proven by Florida's brief, page 9, in quoting the Florida Supreme Court's decision, Hill, 688 So. 2d at 904 n.1:

> As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity that would lead us to conclude that Hill was unable to make a fully intelligent understanding choice to waive counsel under Rule 3.111(D).

No one seriously can dispute the complexity of the necessity defense. At page 12 of Florida's brief, it comments on Hill's six-page footnote at pages 19 through 25 of Hill's petition, where the predicate steps to establish the justification defense are set forth. Significantly, Florida does not even dispute the fact that the use of compulsory process by a knowledgeable, experienced criminal lawyer is required to set up that factual predicate necessary for the complex justification defense. How could Hill possibly have accomplished that from a prison cell?

Respectfully, U.S. v Harrison, 451 F. 2d, 1013 (1971), which reversed a conviction when a lawyer was permitted to proceed Pro Se, the court held that the lawyer did not adequately waive representation by counsel. If a lawyer cannot defend himself, certainly Hill cannot defend himself, and Hill, unlike Harrison, is a justification defense case, and Hill was incarcerated.

The dates of the developments of the proceedings in the trial court are

essential to understand the Faretta violation (Appendix references are to Hill's appendix dated June 6, 1997):

09/26/94 Public defender's motion to withdraw and Faretta filing (A25-34)

09/27/94 Transcript of hearing (A34-153)

09/30/94 Court grants both motions (A28-33)

10/13/94 Supplemental Faretta hearing (A153-178C)

10/14/94 Florida's motion to preclude justification defense (A201-206)

10/24/94 Atty. Heuser's motion to appear Pro Hac Vice (A226-228); Hill's motion that Atty. Heuser to represent him (A179-183); Denial of aforesaid motion by court (A183); Florida files brief in open court in support of motion to preclude and hands same to Hill (A185); Florida's in limine brief (A204-225); Court grants Florida's motion to preclude (A199-200);Court's written memorandum granting said motion (A229-230).

On September 26, 1994, the public defender moved to withdraw and filed the Faretta motion. Twenty-nine days later, on October 24, 1994, the motion prohibiting the justification defense was granted by the Court. Therefore, Hill's trial effectively resulted in an extended plea of nolo contendere because he was precluded from setting forth the justification defense--his only defense. As aforesaid, in a five day period from September 26 through September 30, 1994

the public defender was permitted to withdraw and the Faretta motion was granted; on October 14, 1994, Florida filed a motion to preclude the justification defense, but it was not until Hill was in open court on October 24, 1994 that Florida handed Hill the brief in support of its motion to preclude the justification defense. Hill did not even have time to read the brief. Hill's motion to have Attorney Heuser represent him and Attorney Heuser's motion to appear Pro Hac Vice, were both filed, opposed by Florida, and the court denied them all on October 24, 1994.

It is respectfully submitted that even a lawyer as able as Attorney Heuser, if he were standing in open court when a brief was handed to him concerning the motion to be heard, would have requested a continuance to at least read and research the citations. Can anyone seriously assert that Hill, who was incarcerated, who is not a lawyer, who did not understand the factual predicate to present the justification defense, who stated he did not understand the American Jurisprudential System was afforded due process in the handling of the motion to preclude the justification defense? Respectfully, he was not.

II. THE DISMISSAL ISSUE

On pages 13 and 14 of its Brief In Opposition, Florida asks this court to deny the writ on the grounds that Hill has not authorized the petition; Hill has not; but Hill pled not guilty, and he has never sought to change his plea to that of guilty. He has always maintained that he is not guilty of the crimes charged. It must be remembered, despite his not

guilty plea, Hill asked no voir dire questions, objected to no state voir dire questions, waived his opening statement in both the guilt and penalty phases, failed to cross-examine any witnesses, failed to offer any exhibits, failed to object to any exhibits, offered no witnesses, failed to object to any questions by the state, failed to move for a mistrial; filed no request to charge, took no exceptions to the charge, and, despite these Faretta shortcomings, Florida has asked that the writ be dismissed. But Hill has been illegally convicted because, despite pleading not guilty, he was denied due process when he was permitted to proceed Pro Se in violation of Faretta. The undersigned was appointed Hill's lawyer, Pro Hac Vice, by the Florida Supreme Court. For the undersigned to not raise the issues which the undersigned has raised in the petition, would place the undersigned in the position of being an accomplice to the death of a person who is not guilty of the crimes charged, and in any event has not received due process.

This is not the case, as was Lenhard v. Wolff, 444 U.S. 807 (1979) cited by the Respondent, of a defendant having pled guilty, then the defendant asking that his execution not be stayed. In Lenhard, the defendant requested that his execution not be stayed; the state, as it did in the instant case, did not make that request. Hill, on the contrary, pled not guilty and pursued his appeal in the Florida Supreme Court. For the undersigned now to abandon what he perceives as the illegal taking of a life by the state, places the undersigned in, as Justice Marshall, so elegantly set forth in Lenhard, 812, a position where

he would be aiding and abetting the state in committing either suicide or murder. For the undersigned to not raise the issues which the undersigned has raised in the petition, would place the undersigned in the position of being an accomplice to the death of a person who the undersigned believes is not guilty of the crime charged. Hill himself believes he is not guilty of the crimes charged, and, in any event, Hill has not received due process in violation of the Sixth and Fourteenth Amendments. Both Lenhard and Hammett v. Texas, 448 U.S. 725 (1980), cited by the state are inapposite as neither case involved the state seeking to have the petitions dismissed. This is not a Rule 46 issue.

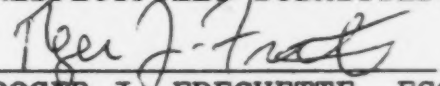
Respectfully, Florida should join in with the petitioner and ask that certiorari be granted, so that the search for the truth might prevail, particularly in this capital case.

CONCLUSION

WHEREFORE, for all the foregoing reasons as set forth herein and those in Hill's Petition for Writ of Certiorari, the Petitioner respectfully requests that this Honorable Court grant his Petition for Writ of Certiorari to the Supreme Court of the State of Florida.

Dated: August 21, 1997

RESPECTFULLY SUBMITTED,

BY 

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